SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 649

ERNEST M. BULL, SOLE SURVIVING EXECUTOR AND TRUSTEE OF THE ESTATE OF ARCHIBALD H. BULL, DECEASED, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Record from Court of Claims	1	1
Petition	1	1
Exhibit "A"—Application for re-opening	25	17
Exhibit "B"—Claim for abatement	27	18
Affidavit of Ernest M. Bull	29	19
Exhibit 1—Additions to schedule "D"	37	25
2—Recomputation of accrued interest	38	26
3—Recomputation of accrued interest	38	26
4—Items to be deducted from schedule "B"	40	27
5—Additions to schedule "H"	42	28
6—Additions to schedule "I"	43	29
"A"—Declaration of trust	45	30
Schedule "B"—Decree of Union County Orphans' Court	46	30
Exhibit "C"—Letter from Commissioner, August 9, 1929	49	32

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—5873-C

	Original	Print
Exhibit "D"—Letter from Commissioner	51	33
Exhibit "E"—Petition to reopen, etc.	58	37
Exhibit "F"—Additional affidavit	65	42
Schedules 1 to 20, inc.—Receipts for bequests and bills, etc.	72	47
Schedules 21 to 23, inc.—Correspondence	92	55
Schedule 24—Receipted bill	99	59
Schedule 25—Release of A. H. Bull Steamship Co.	100	59
Exhibit "G"—Claim for refund	103	61
Affidavit of Ernest M. Bull	105	62
Schedule 26—Deductions claimed	111	67
Exhibit "H"—Claim for refund	112	67
Affidavit of Ernest M. Bull	114	69
Exhibit 1—Condensed balance sheet of A. H. Bull Steamship Co., 1913 to 1920, inc.	122	74
Exhibit 2—Deductions claimed	123	75
Exhibit "I"—Letter from Commissioner	124	75
Exhibit "K"—Claim for refund	127	77
Exhibit "L"—List of certain bequests, etc.	131	79
Exhibit "M"—Letter from Commissioner	133	81
General traverse	135	82
Change of attorneys	135	82
Argument and submission of case	135	82
Special findings of fact	137	83
Conclusion of law	139	86
Opinion of the court, Littleton, J.	139	87
Judgment	142	89
Proceedings after entry of judgment	142	90
Clerk's certificate (omitted in printing)	143	

[fol. 1]

IN THE COURT OF CLAIMS

No. L-383

ERNEST M. BULL, Sole Surviving Executor and Trustee of the Estate of Archibald H. Bull, Deceased,

against

UNITED STATES

I. PETITION—Filed September 16, 1930

To the Honorable the Chief Justice and the Judges of the Court of Claims:

The petitioner, Ernest M. Bull, sole surviving executor and trustee of the estate of Archibald H. Bull, deceased respectfully represents:

1. That Archibald H. Bull, a citizen and resident of Union County, New Jersey, died February 13, 1920, leaving a will in which he nominated his widow, Evelyn P. Bull, now deceased, and this petitioner, Ernest M. Bull, as his executors and trustees of his estate; that such will was duly probated in the Orphans' Court of Union County, New Jersey, and the executors named in the will were duly appointed executors by the Court and administered the estate under the direction of the Court; that on or about April 3, 1927, in the January term, 1927, of said Orphans' Court the final accounting and report of the executors was duly approved and the executors were directed to turn over to themselves, [fol. 2] as trustees under the will, all of the balance of the moneys and property of the estate remaining in their hands to be administered by them as such trustees according to the terms of the said will; and that all of said moneys and property were accordingly so turned over to and received by them, the said Evelyn P. Bull and Ernest M. Bull (this petitioner) as such trustees under the will.

That afterwards, on or about July 22, 1927, Evelyn P. Bull died, leaving this petitioner, Ernest M. Bull, as sole surviving trustee, and that, in accordance with the terms of the will of Archibald H. Bull, deceased, this petitioner

has since the death of Evelyn P. Bull, acted as sole trustee under the will of Archibald H. Bull, deceased, and is still so acting.

2. That Archibald H. Bull, deceased, was in his lifetime a member of a partnership carrying on business under the firm name of A. H. Bull and Company, ship agents and brokers. That said partnership had formerly been established and been carried on under formal written articles of co-partnership, dated January 9, 1918, which created a partnership to begin as of the first day of January, 1918, and to "continue one year from date". That said written articles of co-partnership expired by their terms either on January 1st, 1918, or else on January 9, 1919; and that one of the partners therein named, to wit: William H. R. Killeen, afterwards died prior to the death of said Archibald H. Bull; and that after the expiration of said written articles of co-partnership, the partnership was, nevertheless, by mutual consent of the partners, continued, and after the death of said William H. R. Killeen was reorganized [fol. 3] and carried on by the surviving partners, including said Archibald H. Bull, without further written agreement, but by mutual consent and agreement in accordance with the terms provided in said former written articles of co-partnership; and that, amongst the terms contained in said formal written articles, and in accordance with which the said co-partnership was so being carried on by mutual consent of the then surviving partners and existed at the time of the death of said Archibald H. Bull, was the following provision:

"That in the event of the death of any one of the said co-partners, the surviving partner or partners shall be at liberty to continue said business, and the estate of the deceased partner shall receive the same interests, or participate in the losses to the same extent, as said deceased partner would, if living, based on the usual method of ascertaining what the said profits or losses would be for one year subsequent to the death of the said partner or partners. Or the Estate of the deceased partner shall have the option of withdrawing his interest from the firm within thirty days after the probate of will or letters of administration, and all adjustments of profits or losses shall be made as — the date of such withdrawal."

That in accordance with such provision, the business of the said partnership of A. H. Bull and Company was in fact continued after the death of said Archibald H. Bull, by the surviving partners until the end of the calendar year of 1920, the year in which said Archibald H. Bull died; and that during the period of time from and after February 13, 1920, up to and until December 31, 1920, inclusive, that is [fol. 4] to say, during the period of the balance of the calendar year within which Archibald H. Bull died, such business of the firm, A. H. Bull and Company, so carried on by such surviving partners, earned profits out of which such surviving partners afterwards paid over the sums of $200,117.09, and $12,601.70, aggregating the amount of $212,718.79, to the executors and trustees of the estate of Archibald H. Bull, deceased, as the portion of the profits of said partnership payable to the estate of such partner under the provisions of said partnership agreement above mentioned and set forth.

That such first amount of $200,117.09 was so paid to such executors and trustees prior to the date on which they filed their income tax return with the United States Internal Revenue Commissioner for income of the estate for the calendar year of 1920; that said second item above mentioned, of $12,601.70, was so paid to the executors and trustees after such income tax return for income for said calendar year of 1920 had been filed with the United States Internal Revenue Commissioner.

3. That said executors and trustees in preparing and filing with the Internal Revenue Commissioner the income tax return for income received by the estate of Archibald H. Bull, deceased, during the calendar year of 1920, that is to say, for the period from the date of the death of said decedent, February 13, 1920, to the end of that calendar year, December 31, 1920, and without consulting legal counsel, included in such return as income for the estate during such period said sum of $200,117.09, so received by such executors and trustees from such surviving partners of the partnership of A. H. Bull and Company, and did not include [fol. 5] such sum as corpus of the estate in the return made by them of the corpus of the estate for inheritance tax purposes.

4. That thereafter the Commissioner of Internal Revenue, after an investigation, determined that such sums of

money so received by said executors and trustees from such surviving partners aggregating, as aforesaid, the sum of $212,718.79 (including both the said items of $200,117.09 so received by the executors and trustees before making their income tax return of income of the estate for the year of 1920 and also the further said sum of $12,601.70 so received by the executors and trustees after making such income tax return for that year) constituted a part of the corpus of the estate of Archibald H. Bull, deceased, and were not income of the estate for the period after his death, and further that such aggregate sum of $212,718.79, as aforesaid, should have been reported and was to be treated as corpus of the estate for the purpose of the Federal estate taxes, and should not have been included in the income tax return for the purpose of the income tax. That in accordance with such ruling of the Commissioner, the two taxes, viz., the Federal estate tax and the income tax, for such calendar year of 1920, were settled and paid on that basis—that is to say, on such basis of the Commissioner's ruling that such amount so received by the executors from the surviving partners of the partnership of A. H. Bull and Company, under such above mentioned provisions in said partnership agreement, constituted a part of the corpus of the estate of the decedent and did not constitute income accruing to his estate after his death, and that accordingly said executors and trustees paid the Fed-
[fol. 6] eral estate tax on that basis, that is to say, paid the Federal estate tax assessed on the basis of including such sum of $212,718.79 as a part of the corpus of the decedent's estate; and that said Federal estate tax was so paid in two installments as follows: On June 17, 1921, $250,000.00, and on August 10, 1921, $86,264.66, total estate tax, $336,264.66. (Said estate tax was afterwards determined to have been overpaid because of other items relating to the estate of the decedent in no way connected with any of the matters here in question. Because of such other matters the amount of such estate tax was finally determined to be $312,127.17 and the difference between such amount and the amount of $336,264.66, so paid as aforesaid, was refunded to the executors and trustees. But, as aforesaid, that refund was not made because of anything connected with any of the matters here in question.)

5. That several years afterwards, on or about July 10, 1925, the Commissioner of Internal Revenue reversed such

former ruling; and, by his letter of said last mentioned date to the said executors and trustees, the Commissioner determined a "deficiency" of $261,212.55, in the amount of the income taxes which had theretofore been assessed upon the income which accrued to the estate of Archibald H. Bull after his death; and that in so determining said deficiency the Commissioner, in reversal, as aforesaid, of his former ruling, ruled that such sums so received by the executors and trustees from the surviving partners of the firm of A. H. Bull and Company, as aforesaid, constituted legally, and were to be treated and considered for the purposes of [fol. 7] assessing and collecting the income tax, as "income" to the estate of Archibald H. Bull, deceased, after his death.

6. That afterwards, on or about September 5, 1925, and before the enactment of the Revenue Act of 1926, such executors and trustees duly appealed from said ruling of said Commissioner so determining such deficiency to the Board of Tax Appeals; that a hearing was had; and that afterwards, on or about August 8, 1927, the Board of Tax Appeals promulgated its decision (officially reported in Volume 7, Board of Tax Appeals Reports, page 993, Docket No. 6888) wherein it modified such deficiency determination of the Commissioner, but upheld—and, as this petitioner respectfully submits, mistakenly, wrongfully and illegally upheld—such ruling of the Commissioner in so far as it held (in reversal of his former ruling in reliance whereon the Federal estate tax had been paid) that such sums so received by the executors and trustees from the surviving parthers of the firm of A. H. Bull and Company, under the provisions of the partnership agreement hereinbefore mentioned and set forth, constituted income accruing to the estate of said deceased Archibald H. Bull after his death, upon which income taxes should be levied against the estate as for income received by it during the period from February 13, 1920, to December 31, 1920 (that is, during the balance of the calendar year from the date of the death of Archibald H. Bull until the end of that year.)

7. That afterwards, on or about April 9, 1928, the Commissioner of Internal Revenue formally acquiesced in such decision of the Board of Tax Appeals of August 8, 1927, [fol. 8] aforesaid, and "pursuant" thereto determined,

anew, a "deficiency" of $55,166.49 of income tax alleged to be due to the United States from the estate of Archibald H. Bull, deceased, on account of such sums of money so received by such executors and trustees, as aforesaid, from the surviving partners of the partnership of A. H. Bull and Company. That afterwards, on or about June 14, 1928, this petitioner as sole surviving executor and trustee of the estate of Archibald H. Bull, deceased, paid to the Collector of Internal Revenue the amount of such "deficiency", $55,166.49, so determined by the Commissioner, as aforesaid, together with interest and penalties thereon, the amount of such payment aggregating $62,677.44, and that afterwards, on or about July 11, 1928, this petitioner, as such sole surviving executor and trustee, duly filed with said Commissioner his claim for refund of said last mentioned sum of $62,677.44. A copy thereof is Exhibit "K" hereto. That on or about April 9, 1929, an oral hearing was duly had upon such claim for refund, and that afterwards, on or about April 24, 1929, said claim for refund was duly denied by the Commissioner of Internal Revenue; and that on or about August 9, 1929, the Commissioner of Internal Revenue denied a rehearing or reconsideration of such claim for refund, and finally rejected the claim, as appears from a copy of the letter of the Commissioner to Mr. Alfred C. Frodel, attorney for this petitioner, dated August 9, 1929, copy whereof is hereto attached, marked Exhibit "C", and made a part of this petition with the same effect as though it had been herein copied and set forth at length.

8. That said Commissioner of Internal Revenue in so, on or about July 10, 1925 reversing his former ruling, as afore- [fol. 9] said, and the Board of Tax Appeals in so affirming such ruling of the Commissioner in reversing the Commissioner's first ruling, and in holding such sums so received by the executors and trustees from the surviving partners of A. H. Bull and Company under the provisions of the partnership agreement hereinbefore mentioned and set forth, to be income accruing to the estate of said decedent, Archibald H. Bull, after his death, upon which income taxes should be levied against the estate, and also the Commissioner of Internal Revenue in so acquiescing in such decision of the Board of Tax Appeals, and in so assessing thereon, anew, such "deficiency", on or about April 9, 1928, and in requiring this petitioner as sole surviving executor

and trustee of the estate of Archibald H. Bull, deceased, so to pay such "deficiency", and also in thereafter denying such petition of this petitioner for a refund, and in denying, on or about August 9, 1929, a rehearing or reconsideration of such claim for refund, and in so, then, finally rejecting the claim, were each and all in error, and that, as this petitioner respectfully submits, such sums so received by the executors and trustees of the estate of Archibald H. Bull, deceased, from the surviving partners of the firm of A. H. Bull and Company under the provisions of such partnership agreement after the death of Archibald H. Bull, were really, in fact and in law, part of the corpus of the estate of such decedent, as was originally held by the Commissioner of Internal Revenue, as hereinbefore stated and set forth, and were not income of the estate, and that, accordingly, the taxes payable by the estate, both the estate taxes and income taxes, were properly settled and paid in 1921 upon the basis of the Commissioner's ruling at that time, and that, therefore, the amount of the supposed "de-
[fol. 10] ficiency" in income taxes determined by the Commissioner, as aforesaid on or about April 9, 1928, pursuant to such ruling of the Board of Tax Appeals, and said payment made by this petitioner pursuant thereto, of the amount of such "deficiency", together with interest and penalties, in the amount of $62,677.44, paid by this petitioner, as aforesaid, on June 14, 1928, was improperly and erroneously assessed and required to be paid by this petitioner, and should be refunded to him by the United States.

9. That furthermore, in case it should be found and determined by this Honorable Court, to the contrary of the belief and contentions of this petitioner, that said sums so received by such executors and trustees after the death of said decedent, Archibald H. Bull, from such surviving partners of such former partnership of A. H. Bull and Company under such provisions aforementioned in the partnership agreement of the firm in existence at and prior to the death of Archibald H. Bull, are really to be considered as income accruing after the decedent's death to this estate, as now ruled by the Commissioner of Internal Revenue and held by the Board of Tax Appeals, and not part of the corpus of the estate as originally held by the Commissioner of Internal Revenue, as aforesaid, and that, therefore, such "deficiency" in income taxes paid by the estate was prop-

erly determined by the Commissioner of Internal Revenue on or about April 9, 1928, as aforesaid, to be paid; then in that case, this petitioner respectfully alleges that the Commissioner of Internal Revenue should thereupon on that date, to wit: April 9, 1928, have simultaneously found and ruled [fol. 11] and determined that so much of the estate taxes so paid as aforesaid on June 17, 1921 and August 10, 1921 ($250,000.00 on June 17, 1921, and $86,264.66 on August 10, 1921, as aforesaid), as represented the taxes upon the amount by which the corpus of the estate was increased by including therein such sums aggregating $212,718.79 so received, as aforesaid, by the executors and trustees after the death of said decedent from the surviving partners of the firm of A. H. Bull and Company (to wit: $34,035.00 of the taxes so paid as estate taxes, being sixteen per cent of said sum of $212,718.79), was improperly and illegally collected and paid to the United States as estate taxes upon the estate of said decedent, but should have been collected and treated when it was so paid as money paid on account of the income taxes upon such income of the estate so received from such surviving partners of the firm of A. H. Bull and Company, and, upon making such determination, the Commissioner of Internal Revenue should thereupon have credited such sum of $34,035.00, so paid to the United States in 1921, together with interest thereon at the rate of six per cent per annum from the date it was so paid, August 10, 1921, against the "deficiency" so determined by him on or about April 9, 1928, and should, therefore, have determined a net "deficiency" of income taxes of only $7,523.16 (that is to say, $55,166.49 less $47,643.33; being such "deficiency" of $55,166.49 less such above mentioned sum of $34.035.00 with interest calculated thereon at six per cent per annum from August 10, 1921 to April 9, 1928); and should have collected only such latter sum of $7,523.16, instead of the said sum of $62,677.44 actually collected and paid by this petitioner on or about July 11, 1928, as aforesaid; and that, there-
[fol. 12] fore, even if—(to the contrary of the belief and contentions of this petitioner)—such sums of money so received by the executors and trustees of the estate from the surviving partners of the firm of A. H. Bull and Company after the death of the decedent, Archibald H. Bull, were really to be treated as income accruing to the estate after the death of the decedent, and not as a part of the

corpus of the estate, nevertheless, the Commissioner of Internal Revenue should have allowed this petitioner's claim for refund against said payment so made by petitioner on June 14, 1928, to the extent of $47,643.33, together with interest thereon from April 9, 1928, the date of the determination of such "deficiency"; and that such last mentioned sum and interest still remains due from the United States to this petitioner as sole surviving executor and trustee of the estate of Archibald H. Bull, deceased.

That afterwards, on or about January 30, 1929, this petitioner accordingly filed with said Commissioner of Internal Revenue an application for the reopening of both the estate tax return and the income tax return of said estate, covering the period of 1920, under Treasury Decision 4235, on the grounds

"that the Government should make compensating adjustments in both of these cases when the issues involved have been finally considered and determined";

and therein requested

"that a conference be granted in order that these questions may be discussed with the representatives of both the Income Tax and Estate Tax Divisions."

[fol. 13] A copy of said last mentioned application is hereto attached marked Exhibit "A," and made a part hereof. Nevertheless the Commissioner afterwards, by his letter dated August 20, 1929, refused such application, and refused to reopen either the estate tax or the income tax for said estate, and finally rejected such application.

10. And, for a further and separate claim against the United States, this petitioner as sole surviving executor and trustee, as aforesaid, of the estate of Archibald H. Bull, deceased, further shows to the court that amongst other things the will of the said Archibald H. Bull provided certain bequests and legacies for charitable purposes, a list whereof as stated in the said will is hereto appended, marked Exhibit "L," and made a part of this petition with the same effect as though it had been herein copied and set forth at length; that with reference to such bequests, the Ninth paragraph of such will contained the following provisions:

"Ninth. Subject to the life interest thereon of my said wife, Evelyn P. Bull, I give and bequeath the following sums of money to the following charitable organizations and institutions, provided the appraised value of my estate at the time of my death, after the payment of all inheritance taxes, both State and Federal, shall amount to at least $1,000,000.00:

(Here follows in the will the list of bequests or legacies as set forth in Exhibit "L" hereto.)

"In case the appraised value of my estate at the time of my death, after the payment of all inheritance taxes, both State and Federal, shall amount to at least $2,000,-[fol. 14] 000.00, then, and in such case, I give and bequeath to each of the charitable organizations and institutions named in this Ninth paragraph of my will, double the amount named to each."

That, at the times when the executors and trustees made the original return of the estate for the purpose of estate taxes and when they paid the estate taxes in June and August, 1921, as hereinbefore stated, the said Evelyn P. Bull, widow of the decedent, Archibald H. Bull, was living and was one of the executors and trustees, and that it was at that time still uncertain whether or not the amount of such bequests or legacies for charitable purposes so to be paid under such provisions of the will only after the death of Evelyn P. Bull would be payable in the amount therein listed, as they appear in the list copied from the will in Exhibit "L," attached hereto, or would be payable in double the amounts named to each under the final clause of said paragraph Ninth of the will, as hereinbefore quoted, in case the estate should amount, after the payment of all inheritance taxes, both State and Federal, to at least $2,-000,000.00; that, accordingly, in so making said estate returns for the purpose of estate taxes, such executors and trustees claimed a deduction from the amount of the taxes upon which estate taxes should be levied only in the amount of the face of said bequests and legacies, and reserved the right to claim a further deduction in case the amount thereof should afterwards be doubled in accordance with such provisions of the will, and, that, accordingly the estate taxes were finally settled by the Commissioner, on

that basis, May 27, 1924. That, afterwards, Evelyn P. Bull, the widow of Archibald H. Bull, died on or about [fol. 15] July 22, 1927, as above stated, and that, after her death, it was found that the appraised value of the estate of Archibald H. Bull, deceased, at the time of his death, after the payment of all inheritance taxes, both State and Federal, amounted to more than $2,000,000.00, and, accordingly, this petitioner as sole surviving executor and trustee of the estate of Archibald H. Bull, deceased, thereafter paid to each of the charitable organizations and institutions named in the said Ninth paragraph of the said will, as listed therein and copied in Exhibit "L" hereto, double the amount of the bequests or legacies named to each, and that such payments in such doubled amounts aggregated $264,000.00; (that is to say, aggregated the sum of $127,914.54 more than the amount of the deduction from the estate allowed on account of the charitable legacies or bequests by the Commissioner of Internal Revenue by his letter of May 27, 1924, copy whereof is hereto attached, marked Exhibit "D," and made a part of this petition.

11. That following the filing of the return for Federal Estate Taxes, the executors and trustees filed a claim for abatement, verified August 10, 1921, and afterwards filed a claim for refund, verified October 6, 1922. And that afterwards, after the receipt of said letter from the Commissioner, dated May 27, 1924, Exhibit "D" hereto, as aforesaid (in which letter charitable, public and similar bequests were allowed as deductions from the taxable estate to the amount of $136,085.46), and after the death of said Evelyn P. Bull, and after the payment of said charitable bequests listed in said Ninth paragraph of said will and copied in Exhibit "L" hereto, in the aggregate doubled amount of [fol. 16] $264,000, as aforesaid, this petitioner as sole surviving executor and trustee duly filed with the said Commissioner of Internal Revenue on or about November 18, 1927, his formal "Petition to Reopen Prior Claim for Refund," copy whereof is hereunto annexed marked Exhibit "E," and made a part of this petition, whereby, amongst other things, this petitioner formally claimed (in numbered paragraph "1" thereof, and in the "summary" thereof), a "refund for additional payments on charitable bequests," a refund of such proportionate amount of the estate tax theretofore paid, as aforesaid, as corresponded to a reduc-

tion of the taxable estate in the sum of $127,914.54, as aforesaid. (That as appears from said "summary" in said "Petition to Reopen Prior Claim for Refund," Exhibit "E" hereto, a total refund of $69,534.40 was therein claimed, based in part upon a claim to a deduction from the taxable estate of said amount of $127,914.54 for "charitable bequests.")

And that petitioner thereafter, on or about February 16, 1928, filed his "Additional Affidavit," (Exhibit "F" hereto), in support of said "Petition to Reopen Prior Claim for Refund," and also, on or about April 13, 1928, filed with the Commissioner his formal claim for refund of taxes illegally collected (Exhibit "G" hereto), and likewise again included both in such last mentioned "Additional Affidavit" and also in said formal claim for refund, a claim for refund of such amount of the estate tax so paid as corresponded to a deduction of said sum of $127,914.54 from the amount of the taxable estate.

12. That said "Petition to Reopen Prior Claim for Refund" and said formal claim for refund, were afterwards, [fol. 17] by letter of said Commissioner, dated June 30, 1928, rejected and refused; and that afterwards, the Commissioner, by his letter dated August 20, 1929, denied petitioner's request for reconsideration and finally rejected said petition and claim for refund.

13. And for a further and separate claim against the United States this petitioner, as sole surviving executor and trustee, as aforesaid, of the estate of Archibald H. Bull, deceased, further shows the Court that in said claim for abatement of estate tax, hereinbefore mentioned, filed on or about August 10, 1921, the executors and trustees of said estate, referring to schedule "H" of the original return for Federal estate tax, expressly reserved the right to claim additional deductions from the corpus of the estate for additional administration expenses, such as executors' commissions, counsel fees, surrogate fees and other items. That at the time of the filing of such claim for abatement the administration expenses had not been fixed, and that the Commissioner accordingly did not allow them for the reason that they had not been fixed or paid. Further that after the receipt of the said letter of the Commissioner of May 27, 1924, hereinbefore mentioned

(Exhibit "D" hereto), such additional administration expenses were ascertained and paid by the executors and trustees of the estate to the amount of $96,592.95, as follows:

E. D. Mulford, appraising property	$ 50.00
E. W. Phares, appraising property	82.00
C. N. Codding, Surrogate fee	1,386.00
McCarter & English, legal fees and expenses	15,074.95
[fol. 18] Ernest M. Bull, balance of executor's fee	40,000.00
Evelyn P. Bull, balance of executor's fee	40,000.00
	$96,592.95

That accordingly, in said "Petition to Reopen Prior Claim for Refund," filed with the Commissioner on or about November 18, 1927, as hereinbefore set forth (Exhibit "E" hereto), a further deduction from the amount of the taxable estate in said sum of $96,592.95 was duly claimed, and likewise, was also again claimed and demanded in the "Additional Affidavit" hereinbefore mentioned, filed with the Commissioner on or about February 16, 1928 (Exhibit "F" hereto) and also in the formal claim for refund filed with the Commissioner on or about April 13, 1928 (Exhibit "G" hereto). But said claim for refund was likewise rejected and refused by the Commissioner by his letter, hereinbefore mentioned, of June 30, 1928 (Exhibit "I" hereto), and reconsideration thereof was denied and said claim finally rejected by said Commissioner's letter hereinbefore mentioned, on August 20, 1929 (Exhibit "M" hereto). Petitioner submits that said claim should have been allowed by the Commissioner and the corresponding amount of the estate tax should have been refunded in accordance with said claim for refund, and that such amount still remains due and owing from the United States to this petitioner, together with interest thereon.

14. And for a further and separate claim against the United States, this petitioner, as sole surviving executor and trustee, as aforesaid, of the estate of Archibald H. [fol. 19] Bull, deceased, further shows to the Court that in the said claim for refund filed by the executors and trustees on behalf of the estate, on or about October 6, 1922 (Exhibit "H" hereto), in referring to Schedule I of the

original return of said estate tax the executors and trustees reserved the right to claim an additional refund on account of income taxes assessed for the years 1917, 1918, 1919 and 1920. And that, after the filing of said last mentioned claim for refund, and after the letter of the Commissioner of May 27, 1924, hereinbefore mentioned (Exhibit "D" hereto), embodying the Commissioner's action thereon, additional assessments of income taxes have been made by the Commissioner against said estate for the years 1917, 1918, 1919 and 1920, and the executors and trustees have paid such additional income tax assessments out of the funds of said estate in the aggregate amount of $53,326.93, as follows:

Additional 1917 Income Taxes		$31,770.11
Additional 1918 Income Taxes	$22,018.78	
Additional 1919 Income Taxes	37,521.20	
	59,539.98	
Less Overassessment 1/1/20—2/13/20	38,217.46	21,322.52
Additional 1919 Income Taxes		234.30
		$53,326.93

That accordingly, after payment of the last mentioned amounts, this petitioner duly included in his "Petition to Reopen Prior Claim for Refund," hereinbefore mentioned, filed with the Commissioner, on or about November 18, 1927 (Exhibit "E" hereto), a claim for deduction from [fol. 20] the amount of the taxable estate for estate taxes of said sum of $53,326.93, and accordingly included the same in his "Additional Affidavit," filed February 16, 1928, as aforesaid (Exhibit "F" hereto), and also in his claim for refund filed on or about April 13, 1928 (Exhibit "G" hereto). And that the Commissioner should have allowed the said claim for refund for the corresponding amount paid for estate tax; but, nevertheless, the Commissioner by his letter aforesaid of June 30, 1928 (Exhibit "I" hereto), and his letter of August 20, 1929 (Exhibit "M" hereto), denied said petition for refund as to this item, and also denied reconsideration thereof and finally rejected the same. This petitioner submits that there remains due

and owing from the United States to this petitioner as sole surviving executor and trustee of the said estate the amount of overpayments of estate tax corresponding to the deduction in the amount of the taxable estate that should have been allowed and should now be allowed on account of such sum of $53,326.93 so paid for such additional income-tax.

15. And for a further and separate claim against the United States this petitioner, as sole surviving trustee and executor of the said estate of Archibald H. Bull, deceased, as aforesaid, further shows to the Court that in the claim for abatement filed by the executors and trustees of the estate, on or about August 10, 1921, as hereinbefore set forth (Exhibit "B" hereto), in referring to additions to Schedule I as originally returned in the return for Federal estate tax, reference was made to the insurance of steamships by the deceased. And further that at the time of the filing of said claim for abatement, the amounts of such in-
[fol. 21] surance which had been so assumed by the deceased were estimated. That it was not possible at that time to state the exact amounts because the underwriters' adjustment had not then been completed. And further that in addition to the estimated amounts so set up in said claim for abatement, the executors and trustees afterwards paid out of the funds of the estate additional insurance claims to the amount of $9,234.71, as follows:

Insurance Claim, SS "Dorothy," paid March 24, 1924	$2,734.71
Insurance Claim, SS "Beatrice," paid Feb. 26, 1925	6,500.00
Total	$9,234.71

And that, accordingly, this petitioner included in his "Petition to Reopen Prior Claim for Refund," filed on or about November 18, 1927, as heretofore set forth (Exhibit "E" hereto), a claim for a deduction from the amount of the taxable estate for estate tax, the said sum of $9,234.71, and for a corresponding refund of the estate tax, and likewise, said item was claimed in his "Additional Affidavit" filed on or about February 16, 1928, as heretofore set forth (Exhibit "F" hereto) and also in his claim for refund

filed on or about April 13, 1928 (Exhibit "G" hereto). That the same should have been allowed by the Commissioner; but, nevertheless, the said Commissioner, by his letters of June 30, 1928 and August 20, 1929 aforesaid (Exhibits "I" and "M" hereto), denied and rejected this item, and also denied reconsideration thereof and finally rejected the same. And that this petitioner submits there remains due and owing from the United States to this petitioner an [fol. 22] amount overpaid as estate tax on said estate in the amount corresponding to the tax on said sum of $9,234.71.

16. Your petitioner, therefore respectfully submits that there remain due and owing from the United States to this petitioner the following amounts:

First. The said sum of $62,677.44, paid by this petitioner on June 14, 1928, pursuant to the Commissioner's determination of April 9, 1928 of supposed "deficiency" in income tax of said estate, together with interest thereon, since the date of such payment, June 14, 1928, as hereinbefore set forth in paragraph numbered "8" hereof, and preceding paragraphs.

Or else, in the alternative, the sum of $47,643.33, together with interest thereon from April 9, 1928, as hereinbefore set forth in paragraph numbered "9" hereof;

and

Second. Also the further sum of $41,517.45, with interest thereon since November 18, 1927, the date of filing of said "Petition to Reopen Prior Claim for Refund" (Exhibit "E" hereto), being the amount of the overpayment on account of Federal estate tax of said estate of the various items mentioned and set forth in said last mentioned petition of November 18, 1927, and likewise in the said "Additional Affidavit," filed on or about February 16, 1928 (Exhibit "F" hereto), and in said formal claim for refund filed on or about April 13, 1928 (Exhibit "G" hereto), and in the foregoing paragraphs numbered "10" to "15" inclusive hereof, of deductions which should have [fol. 23] been allowed by the Commissioner and should now be allowed against the amount of the estate taxable for the purpose of estate tax, viz:

For charitable bequests	$127,914.54
For administration expenses	96,592.95
For additional income taxes	53,326.93
For additional insurance	9,234.71
Total	$287,069.13

17. Petitioner further says that, as sole surviving executor and trustee as aforesaid, he is the sole owner of the foregoing claim; that no assignment or transfer of same, or any part thereof, has been made; that petitioner, as such executor and trustee, is justly entitled to the amount claimed from the United States after allowance of all just credits and offsets; that petitioner is a citizen of the United States and has at all times borne true allegiance to the Government of the United States and has not in any way aided, abetted or given encouragement to rebellion against the Government of the United States and that he believes the facts as stated in this petition to be true.

Wherefore petitioner prays judgment for such sums as may be justly due and owing to him as sole surviving executor and trustee of the Estate of Archibald H. Bull, deceased, and for such other, further and different relief to which this Court may find petitioner to be entitled.

Ernest M. Bull, as Sole Surviving Executor and Trustee of the Estate of Archibald H. Bull, Deceased.

[fol. 24] *Duly sworn to by Ernest M. Bull. Jurat omitted in printing.*

[fol. 25] EXHIBIT A TO PETITION

Commissioner of Internal Revenue,

Washington, D. C.

Attention Income Tax Unit

DEAR SIR:

In re Estate of Archibald H. Bull—E. M. Bull, Trustee.
Income and Estate Taxes for Period of 1920

Application is hereby made for re-opening of both the estate tax return and the income tax return covering the period of 1920, under Treasury Decision 4235.

It is contended that both the estate tax and the income tax returns are so tied up that neither one of these returns should be considered as closed until the Board of Tax Appeal's decision on the income tax questions of the estate and the Commissioner has had an opportunity to acquiesce or non-acquiesce, and after final disposition of the case of George Nichols and Mary B. Nichols v. United States, U. S. Court of Claims, in which case a petition for certiorari was filed in the Supreme Court of the United States, which petition was denied on April 16, 1928.

It is also contended that all claims for refunds, abatements, etc., together with protests and briefs now on file, should be considered a part of this application, together with Revenue Agent's Report dated January 4, 1929, and protest which will be filed in due time.

It is further contended that these cases come clearly within Treasury Decision 4235, as the questions in dispute in both these cases could not have been properly determined [fol. 26] or disposed of until the Board's decision and the final disposition of the Nichols v. United States case referred to above, and that the Government should make compensating adjustments in both of these cases when the issues involved have been finally considered and determined.

It is requested that a conference be granted, in order that these questions may be discussed with representatives of both the Income Tax and Estate Tax Divisions.

Alfred S. Frodel, Attorney for Taxpayer.

January 30, 1929.

[fol. 27] EXHIBIT B TO PETITION

Treasury Department,

U. S. Internal Revenue

Claim for Abatement, Taxes Erroneously or Illegally Assessed

Important: This claim should be forwarded to the Collector of Internal Revenue from whom notice of assessment was received.

STATE OF N. J.,
County of Essex, ss:

Estate of Archibald H. Bull, 40 West Street, New York City, N. Y.

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of claimant named above, and that the facts stated below with reference to said claim are true and complete.

1. Business engaged in by claimant—Estate.
2. Character of assessment or tax—Estate Tax.
3. Amount of assessment—$419,594.30.
4. Amount now asked to be abated—$83,329.60.

Deponent verily believes that the amount stated in item 4 should be abated, and claimant now asks or demands abatement of said amount for the following reasons:
[fol. 28] See statement and exhibits annexed. Should further information be desired please address McCarter & English, 765 Broad Street, Newark, N. J., the attorneys of the Estate.

(Signed) Ernest M. Bull, Executor.

Sworn to and subscribed before me 10th day of August, 1921. Arthur F. Egner, Master in Chancery of New Jersey.

[fol. 29] AFFIDAVIT OF ERNEST M. BULL

STATE OF NEW JERSEY,
County of Essex, ss:

Ernest M. Bull, being duly sworn, deposes and says:

I am one of the executors of the estate of Archibald H. Bull, deceased, and as such, I have executed the claim for abatement hereunto annexed. The matters and things contained in said claim for abatement are true to the best of my knowledge, information and belief.

Mr. Archibald H. Bull died on the 13th day of February, 1920, leaving a very considerable estate. A return on form

706 was prepared under *by* direction and filed by me within the time prescribed by law. For various reasons beyond the control of the executors of said estate, the said return was not in all respects full and complete. Upon the basis of information since obtained, therefore, we present herewith a revision of the figures contained in our return in certain respects indicating a net estate of a less amount than that in the original return, and we present accordingly our claim for abatement.

The particulars in which said return should be amended are as follows:

Additions to Schedule D of Original Return

Since the making of the original return, the executors of the estate have made collection of other assets in addition to those originally reported. Exhibit "1" hereto annexed, contains a true statement of such additional assets indicating additional items amounting to $17,741.54. The items contained in said Exhibit are self-explanatory and no further explanation is deemed to be necessary.

[fol. 30] Additions to Schedule "C" as Originally Returned

A recomputation of the amount of interest accrued upon the items set forth in Schedule "C" up to the date of decedent's death indicates that such items were not correctly figured in the original return. Annexed hereto and marked Exhibit "2" is a schedule showing the proper computation of said interest. Such computation indicates a total amount of interest accrued up to the date of death of decedent of $103.08. The original return included an item of $98.33 on this account indicating, therefore, an addition to this schedule of the sum of $4.75.

Reductions from Schedule B on Account of Recomputation of Accrued Interest

A recomputation of the amount of interest accrued up to the date of decedent's death upon the stocks and bonds set forth in Schedule "B" of the original return indicates that the computation of interest set forth in said return is erroneous. Annexed hereto and marked Exhibit "3" is a full and correct computation of interest accrued upon the stocks and bonds therein set forth up to the date of de-

cedent's death. Said Exhibit indicates a total accrued interest amounting to $7,100.34, as against a total of $28,854.32 reported in the original return and indicating a difference of $21,753.98, which should be deducted from the amount of the estate.

[fol. 31] Deductions from Schedule "B" on Account of Securities Not Part of the Estate of Decedent

Exhibit "4" hereto annexed contains a list of certain stocks which were returned in Schedule "B" of the original return as a part of the decedent's estate, but were not in fact his property upon the date of his death.

The stocks above mentioned, although standing in the name of the decedent upon the date of his death, were at that time in fact held by him as Trustee for Evelyn B. McLain and stocks should not have been returned as a part of his estate. The said stocks were at one time the property of the decedent but were, on the Christmas preceding his death and not in contemplation of death or with any intention of such gift being intended to take effect at or after his death, given as a Christmas present by the said decedent to his daughter, Evelyn B. McLain. The decedent on or about the 24th day of December, 1919, executed a declaration of trust evidencing such gift. Annexed hereto and marked Exhibit "A" is a true copy of such declaration of trust.

Additional Items to Schedule "H" of Original Return

Annexed hereto and marked Exhibit "5" is a statement of items to be added to Schedule "H" of the original return. The items therein set forth are mostly self-explanatory. With respect to the items therein included covering the fees of the Union County Surrogate on first accounting, estimated executors' commissions and estimated counsel fees, deponent deposes and says as follows:

[fol. 32] The executors of the decedent's estate have filed in the domicile of the decedent, Union County, New Jersey, a first accounting of said estate. The gross amount of said estate indicated by said first accounting and based upon inventory valuations without the deduction of any charges against said estate, amounted to the sum of $4,050,328.61 of principal and $656,346.04 of income, making

the total accounted for $4,706,674.65, and a net balance in the hands of accountants, upon such valuation, of $3,218,665.85 of principal, and $53,216.26 of income. Upon said first accounting, the executors asked for the allowance of commissions based upon the amount of the gross income received by the executors, but no application was then made for an allowance of commissions upon the amount of the principal of the estate, and at the same time the allowance of a counsel fee upon the same basis was made to the Union County Orphans Court. The said first accounting of the executors was approved by the Union County Orphans Court by a decree entered in said Court on the 29th day of July, 1921, a true copy of which decree is hereto annexed and marked Schedule "B". Under said decree, the executors were allowed the sum of $20,000.00 on account of such commissions as may be allowed to them upon their final account as executors; Surrogate's fees were allowed amounting to $4,719.67, and a counsel fee was allowed to the counsel of the executors amounting to $5,000.00, together with their disbursements of $125.73.

The amount of commissions allowed by the Court to the executors on account of their fees, was slightly in excess of 3% upon the amount of income which had been received by them.

It is the intention of the executors to file a final account of their administration as such executors and to turn over [fol. 33] the estate to the trustees appointed under the will of the decedent at a reasonable early date, and at that time executors' commissions on the entire estate will be asked for and an additional counsel fee will also be allowed. For that reason, the estimated amount of these additional allowances has been added to Schedule "H". The estimated executors' commissions, amounting to $140,000.00, is slightly less than 3% of the gross amount of the estate (from this amount, of course, the $20,000.00 allowed will be deducted), and the counsel fees estimated are $15,000.00 (from which amount also the counsel fee already allowed will be deducted).

Additions to Schedule "1" as Originally Returned

Annexed hereto and marked Exhibit "6" is a statement of items to be added to Schedule "1" as originally returned. All of the items therein contained are self-explanatory.

With respect to the item of $74,610.28 being general and particular average claims on insurance of steamers to the A. H. Bull Steamship Co., deponent says as follows:

Decedent was the controlling stockholder in A. H. Bull Steamship Co., a New Jersey corporation, owning over 50% of its capital stock. The said corporation was and is engaged in the steamship business, owning numerous vessels.

For a number of years before his death, decedent had an agreement with the corporation whereby he assumed the risk of percentage of the marine losses suffered by the corporation based upon his percentage of stock holdings in the corporation; this agreement in effect rendering him a co-insurer. The portion of the risk not thus assumed by decedent was insured by the corporation in various insurance companies. As an off-set to the risk which he thus [fol. 34] assumed, decedent was paid from time to time sums equivalent to the amount which it would have been necessary for the company to pay for insurance had it insured the portion of the risk thus assumed by Mr. Bull. The portion of the risk assumed by Mr. Bull amounted to approximately 15% to 20% of the total insurance carried on the vessels. From time to time during his lifetime, decedent made various payments to the corporation on account of losses thus sustained by it. At the time of his death, various claims for losses were pending and the amount attributable to Mr. Bull on account of the percentage of the total risk assumed by him, has been estimated at the sum of $74,610.28. This sum is, therefore, included as a valid claim on the part of the A. H. Bull Steamship Co. against his estate. Of this amount, the sum of $44,610.28 has already been paid by the estate to the A. H. Bull Steamship Co. and the remainder, or the sum of $30,000.00, is estimated to be still due and owing from the estate to the A. H. Bull Steamship Co. The entire amount of $74,610.28 was included by the executors in their account filed in the Union County Orphans' Court as a charge against the estate and such amount was audited and allowed by that Court as a claim against the estate.

Deduction Because of Erroneous Inclusion in Gross Assets of Estate of Assets Set Forth in Schedule of Original Return

In Schedule "E" of the original return, the executors of the estate set forth certain gifts made by the decedent

during the years 1919 and 1920. As the original Schedule "E" indicates, these gifts were not made in contemplation of death nor were they intended to take effect at or after death, and for that reason in Schedule "E," the amount of [fol. 35] these gifts was not extended into the second column for inclusion in the gross estate. Through an error, however, in the preparation of said original schedule, the value of said gifts amounting in all to the sum of $212,587.20, was included in the recapitulation on page thirteen of the return as an item of the gross estate, thereby improperly increasing the net amount of the estate by $212,587.20. For that reason, therefore, we now claim a deduction of that amount. Annexed to the original return are copies of trust instruments and also an affidavit of deponent with respect to such gifts.

Upon the basis of the exhibits hereto annexed, therefore, deponent respectfully recomputes the amount of the estate and the tax payable thereon as follows:

Net amount of estate set forth in original return	$3,738.089.45
Additions to Schedule "D" as per Exhibit 1	17,741.54
Additions to Schedule "C" as per Exhibit 2	4.75
Gross total	$3,755,835.74
Deductions from Schedule "B" on account of recomputation of interest as per Exhibit 3	$21,753.98
Deductions from Schedule "D" as per Exhibit "4"	23,935.40
Additions to Schedule "H" as per Exhibit "5"	160,597.69
Additions to Schedule "1" as per Exhibit "6"	119,682.35
Deductions because of erroneous inclusion of items set forth in Schedule "E" in gross amount of estate	212,587.20
Total deductions	$538,556.62

[fol. 36]

Gross total above set forth	$3,755,835.74
Deductions above set forth	538,556.62
Revised net amount of estate	$3,217,279.12

Net amount of estate as originally reported	$3,738.089.45
Revised net total of estate	3,217,279.12
Decrease	$520,810.33

Computation of tax upon this amount: $520,-810.33 × 17% equals $83,329.65.

Amount of tax as set forth in original return	$419,594.31
Decrease above set forth	83,329.65
Corrected amount of tax due	$336,264.66
Paid on account	250,000.00
Balance of tax due	$86,264.66

Presented with this claim for abatement is the check of the executors of the estate for the sum of $86,264.66, which deponent respectfully states is the proper amount of tax payable by the estate and which he deposes is the correct amount thereof to the best of his knowledge and belief.

(Sgd.) Ernest M. Bull.

Subscribed and sworn to before me this — day of August, 1921. Arthur F. Egner, Master in Chancery of New Jersey.

[fol. 37] EXHIBIT "1" TO AFFIDAVIT

Additions to Schedule "D"

Debts Collected, or Corrections of Inventory Resulting in a Profit or Increase to the Estate

Mar. 11, 1920—Economical Homes Assn., reimbursement of wages for Jan. & Feb. 1920, paid to chauffeur, Otto Mull	$220.00
Mar. 12, 1920—Margaret C. Woodruff, payment on loan in excess of amount reported in inventory	80.00
June 15, 1920—Collector of Internal Revenue, refund of overpayment of 1916 income tax on stock dividends, deducted from payment of 1919 taxes	16,662.41

July 6, 1921—Union County Trust Co. Bank balance was set up in inventory as $5,693.86 whereas balance on 2/13/20 was $6,472.99 .... 779.13

$17,741.54

[fol. 38] EXHIBIT 2 TO AFFIDAVIT

Recomputation of Accrued Interest to Date of Decedent's Death on Items Set Forth in Schedule C

		Par.	Period	Interest
Mar. 17, 1920.	L. J. Wall, 6% Loan—from 12/10/19.....	$3,000.00	65 days	$ 32.14
June 9,	Ida L. Sanford, 5% Mtge. from 12/2/19...	6,000.00	73 days	70.94
	Ida L. Sanford, 6% Mtge. from 12/2/19...	900.00		
				$103.08

EXHIBIT 3 TO AFFIDAVIT

Recomputation of Accrued Interest to Date of Decedent's Death on Items Set Forth in Schedule B

1920		Par	Period	Interest
Mar. 9.	City of Cleveland, 5% Bonds from 9/1/19.....	$10,000.00	166 days	$228.02
	County of Union, 4¼% Bonds from 8/1/19.....	42,000.00	6 mos.	997.50
	City of Jersey City, 4½% Bonds from 9/1/19.....	25,000.00	166 days	513.03
	City of Toledo City, 4½% Bonds from 9/1/19.....	5,000.00	166 days	102.61
	City of Atlantic City, 5% Bonds from 6/1/19.....	5,000.00	6 mos.	125.00
Mar. 11.	Atlantic Coast Line RR., 5% Bonds from 9/1/19..	1,000.00	166 days	18.23
	Bull-Insular Line 6% Bonds from 8/1/19.....	9,000.00	6 mos.	270.00
May 4.	Federal Land Bank, 5% Bonds from 11/1/19....	50,000.00	105 days	721.15
May 5.	3rd Liberty Loan, 4¼% Bonds from 9/15/19....	24,050.00	151 days	424.01
	Township of Weehawken, 5% Bonds from 10/1/19.	9,000.00	136 days	167.21
	4th Liberty Loan 4¼% Bonds from 11/15/19...	36,000.00	90 days	378.29
	2nd Comb. Lib. Loan 4¼% Bonds from 11/15/19...	16,000.00	90 days	166.13
	War Finance Corp. 5% Bonds from 10/1/19....	7,000.00	136 days	130.06

		Par	Period	Interest
[fol. 39]				
	Federal Farm Loan 4½% Bonds from 11/1/19	25,000.00	105 days	324.52
	Joint Stock Land Bank 5% Bonds from 11/1/19	50,000.00	105 days	721.15
May 6.	Bull Insular SS. Co. 6% Bonds from 10/1/19	3,000.00	136 days	66.88
June 1.	City of Boston Reg. 3½% Bonds from 12/1/19	10,000.00	75 days	71.72
June 16.	1st Liberty Loan 3½% Bonds from 12/15/19	88,000.00	60 days	504.92
June 16.	Victory Loan 3¾% Bonds from 12/15/19	150,000.00	60 days	922.13
	City of Atlantic City 5% Bonds from 12/1/19	5,000.00	75 days	51.23
Aug. 5.	City of Trenton 4½% Bonds from 2/1/20	50,000.00	13 days	80.36
Sept. 29.	County of Union 4¼% Bonds from 8/1/19	2,000.00	6 mos.	23.75
	County of Union 4¼% Bonds from 2/1/29	43,000.00	13 days	72.94
1921 June 17.	Liberty Bond, 1st, 3½% Coupon due 6/15/19			17.50
		Total		$7,100.34

[fol. 40] EXHIBIT 4 TO AFFIDAVIT

Items to Be Deducted from Schedule "B"

Stocks Held in Name of Decedent, but Not His Property at Date of Death, and Subsequently Transferred

Description	Amount
Plainfield Union County Water Co. 5 shares @ $125.00. Transferred to Ernest M. Bull, Trustee for Evelyn B. McLain	$625.00
Atlas Portland Cement Co. Preferred 16 shares @ $97.00. Transferred to Ernest M. Bull, Trustee for Evelyn B. McLain	1,552.00
American Cotton Oil Co. Preferred 10 shares @ $88.00. Transferred to Ernest M. Bull, Trustee for Evelyn B. McLain	880.00
Worthington Pump & Machinery Co. Pfd. "B" 20 shares @ $70.00. Transferred to Ernest M. Bull, Trustee for Evelyn B. McLain	1,400.00
Baltimore & Ohio R. R. Co. 20 shares @ 27⅝. Transferred to Ernest M. Bull, Trustee for Evelyn Bull McLain	552.00

[fol. 41]

Baltimore & Ohio R. R. Co. Pfd.	
20 shares @ $42.00. Transferred to Ernest M. Bull, Trustee for Evelyn Bull McLain	840.00
Illinois Central R. R. Co.	
30 shares @ 80⅞. Transferred to Ernest M. Bull, Trustee for Evelyn Bull McLain	2,426.40
Union Pacific R. R. Co. Pfd.	
10 shares @ $66.00. Transferred to Ernest M. Bull, Trustee for Evelyn Bull McLain	660.00
Economical Homes Association	
600 shares @ $25.00. In name of A. H. Bull, Trustee, to be transferred to Ernest M. Bull, Trustee for Evelyn Bull McLain	15,000.00
Total Exhibit "4"	$23,935.40

[fol. 42] EXHIBIT 5 TO AFFIDAVIT

Additions to Schedule H

Funeral, medical & legal expenses, and administrative expenses paid by executor and not included in schedule previously filed.

1921		
Mar. 8.	Inheritance Tax—Atchison Stock	$12.43
" 14.	Register & Transfer Co., transfer tax on Singer stock	1.00
" 22.	Austin & Austin, legal services re N. Y. State transfer tax	510.00
	N. Y. State Comptroller, transfer tax	296.72
1920		
Apr. 18.	H. D. Snyder, transfer of Atlas Portland Cement Stock	1.50
Nov. 11.	Treas. State of Maine, inheritance tax	11.88
Dec. 10.	Commonwealth of Penn., inheritance tax	44.49
	Fees of Union County Surrogate on first accounting	4,719.67
	Executor's commissions (estimated)	140,000.00
	Counsel fees (estimated)	15,000.00
		$160,597.69

[fol. 43] EXHIBIT "6" TO AFFIDAVIT

Additions to Schedule "1"

Debts of decedent paid by executor and not included in schedule previously filed.

1920			
Mar.	1.	Sargent & Co., Inc., 12/9/19, keys	$1.56
		McFarland Taylor & Costello, Inc., 1/20/20—services	28.34
		H. W. Burchard, Inv. 2/7/20, balance subscription Ladies' Home	1.25
		Geo. Lueders & Co., Inv. 2/13/20, olive oil	7.50
		E. B. Mayrowitz, Inv. Jan. 1920, remodelling phinophor	3.70
		C. S. Wood, 125 ft. cover	2.50
		R. M. Barton, 100 lbs. sugar	10.00
		Reed & Barton, Inv. 2/17/20, wedding gift	45.00
		India House, 2/18/1920, dues 6 mos	68.75
1920			
Mar.	8.	N. Y. Produce Exchange Gratuity Fund	15.00
May	11.	Economical Homes Assn., balance of account	2,658.75
Dec.	31.	N. Y. State Income Taxes, 1/1/20/2/13/20	359.14
		Federal Income Taxes, 1/1/20/2/13/20	40,893.46
		A. H. Bull & Co., general and particular average claims on insurance of	
[fol. 44]		steamers	74,610.28
Mar.	22.	Rev. W. W. Heberton, Treas. Bd. Min. Relief, 1916 pledge	100.00
	22.	Y. M. C. A., San Juan	100.00
Apr.	14.	Collector of Internal Revenue, 30 days int. on income tax	51.12
"	20.	Hughes, Rounds, Schuman & Dwight, services, 1916 stock dividend	476.00
1921			
June	21.	Elizabeth Chamber of Commerce, 19 memberships under pledge	250.00
			$119,682.33

[fol. 45] EXHIBIT "A" TO AFFIDAVIT

Declaration of Trust

I, Archibald H. Bull, of the City of Elizabeth, Union County, New Jersey, do hereby declare a trust in favor of my daughter, Evelyn B. McLain in the sum of Twenty-five Thousand Dollars ($25,000.) represented by the securities listed below, my said daughter to have the income of said trust as long as she shall live, and on her death, the principal thereof to be divided between her brother, and sister, equally, share and share alike, or the children them surviving.

And I further declare said principal sum of Twenty-five Thousand Dollars ($25,000) to be no part of my estate.

Dated December —, 1919.

Archibald H. Bull (L. S.)

List of Securities

C 15499	10	shares	American Cotton Oil Prfd.
D 130927	20	"	Common
D 132205			Balt. & Ohio
E 18521	20	"	Prfd. R. R. Co.
E 17697			
412	16	"	The Atlas Portland Cement Co.
328	5	"	Plainfield Water Co.
R 77481	10	"	Union Pacific Co. (R. R. Co.)
O 84059	10	"	Illinois Central R. R. Co.
T 160634	10	"	
B 03247	20	"	Class B 6% pfd. Worthington Pump
36	600	"	Economical Homes Assn.

[fol. 46] SCHEDULE "B" TO AFFIDAVIT

Union County Orphans Court

May Term A. D. 1921

In the Matter of the Estate of ARCHIBALD H. BULL, Deceased.

Decree

The Surrogate having audited and stated the First account of Ernest M. Bull and Evelyn P. Bull, Executors of and Trustees under the Last Will and Testament of Archi-

bald H. Bull, deceased, and placed the same on the files of his office twenty days previous to the 29th day of July, A. D. nineteen hundred and twenty-one, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of their intention to settle the said account on the 29th day of July, A. D. nineteen hundred and twenty-one, in this Court was given by said accountants according to law; and application being made on due notice for the allowance of commissions and counsel fees, and the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct [redacted]articulars, and no exceptions being made thereto,

It is on this 29th day of July, A. D. nineteen hundred and twenty-one, by the Orphans Court of the County of Union, [fol. 47] in the State of New Jersey, ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance remaining in the hands of said accountants amounting to the sum of $3,271,-882.12 and that out of said balance said Executors be and they are allowed the sum of $20,000.00 on account of such commissions as may be allowed to them upon their final account as Executors;

And it is further ordered that said Executors and Trustees do further pay out of said balance in their hands, surrogate's fees amounting to $4,719.67 and a counsel fee of $5,000.00 to McCarter & English, Proctors of said accountants, together with their disbursements of $125.73.

C. B. Pierce, Judge.

A true copy.—Charles M. Codding, Surrogate of Union County, N. J.

[fol. 48] [Endorsed:] Union County Orphans Court. May Term, A. D. 1921. Estate of Archibald H. Bull, Deceased. Decree on First Account. Filed July 29th, 1921. Charles N. Codding, Surrogate.

[fol. 49] EXHIBIT "C" TO PETITION

Treasury Department

Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to IT:E:RRR.

Aug. 9, 1929.

Mr. Alfred C. Frodel, % David A. Buckley, Jr., 815 15th Street, N. W., Washington, D. C.

SIR:

Reference is made to your brief dated January 30, 1929, wherein you request a reconsideration of the income and estate tax liability of the Estate of Archibald H. Bull, Elizabeth, New Jersey, for the period February 14, 1920, to December 31, 1920

It is observed that taxpayer filed an appeal with the United States Board of Tax Appeals from the determination of a deficiency of $261,212.55, as shown in Bureau letter dated July 10, 1925. The case was tried upon its merits on November 4, 1926, and a decision was rendered on August 8, 1927, as reported in 7 B. T. A. 993, Docket #6888.

The decision of the Board was acquiesced in by the Bureau on April 9, 1928, and a deficiency of $55,166.49 which was determined pursuant to such decision, was paid by the taxpayer on June 14, 1928.

[fol. 50] On July 11, 1928, a claim for refund of $62,677.44 was filed which was based upon additional evidence omitted before the Board in the trial of the case. This claim was rejected after the taxpayer was afforded an oral hearing on April 9, 1929.

As no new and material information has been submitted since the conference on April 9, 1929, and particularly since the Bureau views the decision of the Board in this case as final, even though the petition was filed prior to the passage of the 1926 Act, a modification of the decision of the Board will not be made in any particular.

Accordingly, your request for a redetermination of the tax liability is denied.

Respectfully, Robert H. Lucas, Commissioner.

[fol. 51] EXHIBIT "D" TO PETITION

District of Fifth New Jersey

Estate of Archibald H. Bull

Date of Death—February 13, 1920

MT-ET-809-Cl.A.R.-PEN.

Ernest M. Bull, Executor, Estate of Archibald H. Bull, care of Collector, Newark, New Jersey.

SIR:

Reference is made to the claims filed by you on behalf of the above named estate for abatement of $83,329.65 of the tax, and for refund of $166,428.60, paid under the Revenue Act of 1918.

These claims have been carefully considered in connection with the agent's report of investigation, which was conducted with a view to verifying the correctness of the return.

By reason of certain changes recommended by the investigating officer, the estate is liable for a gross tax of $312,127.17. As a tax of $336,265.28 has been paid by the estate, it appears that an excess payment has been made in the sum of $24,138.11. It appears that the assessment made on the basis of the return was $419,594.31, of which the sum of $336,265.28 has been paid, leaving an outstanding assessment of $83,329.03.

Therefore, your claim for abatement of $83,329.65 will be prepared for allowance in the sum of $83,329.03, and is rejected in the sum of $.62.

Your claim for refund of $166,428.60 will be prepared for allowance in the sum of $24,138.11, and is rejected in the sum of $142,290.49.

[fol. 52] However, before the claim can be finally certified, it will be necessary for you to submit in support thereof a short-form certificate of current attestation, from the court, showing your appointment as executor and that such ap-

pointment remains in full force and effect. In the event that the executor has been discharged, there should be submitted in lieu of the above certificate, a statement of the court (a) certifying to the fact of discharge, and (b) setting forth the names and addresses of the persons to whom the refund should be made, and indicating what portion of the amount subject to refund, each should receive.

On the third sheet of this communication is a complete summary of the returned and determined values placed upon the property of the estate, and also the claimed and allowed deductions. Following the summary is an explanation of the changes made.

[fol. 53] Estate of Archibald H. Bull

Date of Death—February 13, 1920

Summary

	Returned	Determined on review
Gross estate:		
Real estate	$80,000.00	$80,000.00
Stocks and bonds	3,910,014.69	3,264,701.01
Mortgages, notes, cash and insurance	103,959.82	108,808.53
Other miscellaneous property	37,751.89	203,593.03
Transfers	212,367.20	103,605.34
Powers of appointment	.....	.....
Property identified as taxed within five years	.....	.....
Total gross estate	$4,344,313.60	$3,622,707.91
Deductions:		
Funeral expenses	1,348.55	1,348.55
Administration expenses—		
Executor's fee	.....	20,000.00
Attorney's fee	.....	5,125.73
Miscellaneous	1,139.80	6,737.49
Debts of decedent	421,735.80	536,990.86
Unpaid mortgages	.....	.....
Net losses during settlement	.....	.....
Support of dependents	.....	.....
Property identified as taxed within five years	.....	.....
Charitable, public, and similar bequests	132,000.00	136,065.46
Specific exemption (resident decedents only)	50,000.00	50,000.00
Total	$606,224.15	$756,288.09
Net estate for tax	$3,738,089.45	$3,066,419.82
Total tax	$419,594.31	$312,127.17
Additional tax paid	.....	$536,265.28
Excess payment	.....	$24,138.11

[fol. 54] The changes indicated below show the specific adjustments as determined by this Bureau, in accordance with the provisions of the Federal estate tax law.

Gross Estate	Returned	Determined
Stocks and Bonds—		
$79,000.00 U. S. First Liberty Loan, 3½'s	$76,329.80	$76,400.90
Accrued interest	3,214.95	454.52
$7,500.00 U. S. First Liberty Loan, 3½'s	7,246.50	7,253.25
Accrued interest	305.22	43.15
$1,500.00 U. S. First Liberty Loan, 3½'s	1,449.30	1,450.65
Accrued interest	61.02	8.63
$16,000.00 U. S. Second Liberty Loan, 4¼'s	14,544.00	14,512.00
Accrued interest	847.28	167.67
$24,000.00 U. S. Third Liberty Loan, 4¼'s	22,396.80	22,411.20
Accrued interest	1,440.91	421.97
$50.00 U. S. Third Liberty Loan, 4¼'s	46.66	46.69
Accrued interest	3.01	.88
$35,000.00 U. S. Fourth Liberty Loan, 4¼'s	31,815.00	31,857.00
Accrued interest	1,977.41	493.12
$1,000.00 U. S. Fourth Liberty Loan, 4¼'s	909.00	910.20
Accrued interest	56.60	14.09
$149,000 U. S. Victory Loan, 4¼'s	145,662.40	145,617.70
$1,000.00 U. S. Victory Loan, 4¼'s	977.60	977.30
Accrued interest on above Victory Loan Bonds	6,747.40	1,386.99
$50,000.00 Joint Stock Farm Loan Bonds	48,750.00	50,000.00
Accrued interest	5,207.19	719.18
Accrued interest of $50,000 Federal Farm Loan Bonds	3,207.19	719.18
Accrued interest on $25,000 Federal Farm Loan Bonds	1,443.91	323.63
Accrued interest on $7,000 War Finance Corporation, 5's	128.20	130.41
Accrued interest on $50,000 City of Trenton 4½'s	73.92	80.14
Accrued interest on $45,000 Union County, New Jersey, 4¾'s	2,109.58	1,102.08
Accrued interest on $25,000 City of Jersey, 4½'s	1,630.83	611.65
Accrued interest of $9,000 Weehawken-Hudson Company, 5's	614.60	167.67
[fol. 55]		
Accrued interest on $10,000 City of Cleveland, 5's	724.62	227.40
Accrued interest on $5,000 Toledo District School 4½'s	326.19	102.33
Accrued interest on $5,000 Atlantic City Water Bonds	299.82	159.06
Accrued interest on $10,000 Boston registered bonds	99.84	71.92
Accrued interest on $1,000 Atlantic Coast Line 4's	44.65	18.19
Accrued interest on $9,000 Atlantic Coast Line 4's	45.00	291.48
Accrued interest on $3,000 Bull Insular Steamship Co. 6's	245.88	67.01
20 shares Baltimore & Ohio R. R. Company, Common	552.00	577.50
20 shares Baltimore & Ohio R. R. Company, Pfd.	840.00	855.00
30 shares Illinois Central R. R. Company, Common	2,426.40	2,445.00
12,550 shares The A. H. Bull Steamship Company	3,137,500.00	2,510,000.00
50 shares Crowell-Thurbow Steamship Company, Common	4,000.00	4,275.00
100 shares Morristown, Union & Middlesex Lighting Company	6,000.00	6,500.00
60 10/19 shares Connecticut Steel Corporation, Common	.....	1,210.53

Gross-Estate	Returned	Determined
50 shares Cuban Cane Sugar Co. Common	2,050.00	2,106.25
10 shares Young Men's Building & Loan Association of Elizabeth, New Jersey	559.89	507.47
Mortgages, Notes, Cash and Insurance—		
Cash in Union County Trust Company, Elizabeth, N. J.	5,693.86	6,488.30
Insurance payable to estate of decedent	74,321.24	78,370.76
Accrued interest on $6,900 mortgage note	67.84	70.94
Accrued interest on $3,000 mortgage note	30.49	32.14
Other Miscellaneous Property—		
Accrued interest on loan of money from Archibald H. Bull to Mary C. Woodruff	.....	80.00
Undivided interest in partnership A. H. Bull & Co.	24,124.26	235,202.99
Certificate of membership in New York Produce Exchange	3,400.00	3,000.00
[fol. 56]		
Pierce-Arrow Touring Car	6,800.00	5,000.00
Reimbursement of wages paid by decedent for the Economical Homes Association	.....	220.00
Refund ofo verpayment of 1916 income taxes	.....	16,662.41
Transfers—		
Gifts from the decedent during 1919 to his daughter-in-law, Mrs. Edith U. Bull; his wife, Mrs. Evelyn P. Bull, and his daughter, Mrs. May V. D. Kiggins of the items set out under Class I	66,355.00	
Transfers to Benjamin W. Bull and Georgia H. Bull, pursuant to declaration of trust dated January 7, 1918, and May 27, 1919, of the items set out under Class II	39,982.20	
Transferred to James H. Bull and Mary E. Bull, pursuant to declaration of trust dated May 17, 1917:		
Reversionary interest in 5 shares of A. H. Bull Steamship Company	1,250.90	605.34

Deductions	Determined	Returned
Executors' fee	$20,000.00	$000.00
Attorneys' fee	5,125.73	000.00
Miscellaneous administration expenses	6,737.49	1,139.80
Debts of decedent	536,900.86	421,735.80
Charitable bequests	136,085.46	132,000.00
Difference between net estate, returned and determined to balance	.....	$671,669.63

Executor's fees, attorneys' fee and miscellaneous administration expenses are deducted in the actual amounts expended therefor, as disclosed upon investigation.

Under the caption "debts of Decedent", deduction is allowed of all of the items claimed in the return. There is also allowed under this caption the sum of $13,000, balance due by decedent to the Elizabeth General Hospital; $57,182.99, the amount which it appears the estate will be called upon to pay in connection with the claims of insuranse of

steamers of the A. H. Bull and Company; and $45,072.07, [fol. 57] the total of the additional items set out in the claim for abatement.

No deduction is made for the sum of $6,678.34, claimed for income tax, inasmuch as this has not been paid by the estate.

Under the caption "Charitable, Public and Similar Gifts and Bequests", deduction is made of the following items:

Present worth of bequests to charitable institutions, amounting to $132,000. payable at the death of decedent's widow, $91,825.86.

Present worth of remainder in several trust funds each payable to the charitable institution after the death of several joint or singular life tenants, the principal of these trusts being included under the caption "Transfers", and designated as "Classes 4, 5, 6, 7, 8, 9 and 10." Present worth of the remainder of each of these items is as follows:

Class 4, $9,080.10.
" 5, 7,491.40.
" 6, 8,167.48.
" 7, 5,976.28.
" 8, 5,275.70.
" 9, 4,708.80.
" 10, 3,559.90.

This letter shows the Bureau's determination of the estate tax liability of this estate. All questions relating to the discharge of this tax should be taken up direct with the Collector and not with this office.

Respectfully, J. B. Bright, Acting Commissioner.
BIK.

[fol. 58] EXHIBIT "E" TO PETITION

In re Estate of Archibald H. Bull

Ernest M. Bull, Executor, 40 West Street, New York City, New York

MT-ET-809-CL.-A.R.-PEM.

Petition to Re-open Prior Claim for Refund

STATE OF NEW YORK,
County of New York, ss:

Ernest M. Bull, being duly sworn according to law, upon his oath deposes and says:

I am the sole surviving executor of the estate of Archibald H. Bull, late of Elizabeth, New Jersey, who died February 13th, 1920.

Following the filing of the return for Federal estate taxes a claim for abatement was filed, verified August 10th, 1921, and thereafter a claim for refund was filed, verified October 6th, 1922.

Thereupon the Commissioner fixed the net estate at $3,066,419.82, as verified by the Commissioner's letter dated May 27th, 1924 (MT-ET-809-CK.-A.R.-PEM).

At the time of the filing of the original return and also at the time of the filing of the claims for abatement and refund the widow of Archibald H. Bull, Evelyn P. Bull, was living.

Under the terms of the will of Archibald H. Bull, the income of the residue of the estate was payable to his said widow and certain charitable bequests set forth in the ninth paragraph of his said will were not payable until after her death.

[fol. 59] Evelyn P. Bull, the widow, died on the 22nd day of July, 1927.

Petition is now made to reopen prior claims for refund and abatement, which were only partially allowed in the Commissioner's letter of May 27th, 1924, in order to permit the executor to make claim for additional refund for items which could not be determined until the present time.

1. Refund for Additional Payments on Charitable Bequests

In the ninth paragraph of his Will decedent made certain charitable bequests payable on the death of his wife to the face amount of $132,000.00. In Schedule K of the original return for federal estate tax attention was called to the following language in paragraph "9" of decedent's will:

"In case the appraised value of my estate at the time of my death, after payment of all Inheritance taxes, both State and Federal, shall amount to at least $2,000,000.00, then in such case, I give and bequeath to each of the charitable organizations and institutions named in this 9th paragraph of my will, double the amount named to each."

The appraised value of the said estate did amount to at least $2,000,000.00 and the amount payable for charitable

bequests under the ninth paragraph, therefore, became the sum of $264,000.00.

In the letter of the Commissioner to the executor dated May 27, 1924 (MT-ET-809-CL.-A.R.-PEM) charitable, public and similar bequests were allowed to the amount of $136,085.46. On July 22nd, 1927, as already stated, Evelyn P. Bull, the widow, died. Thereupon the charitable be- [fol. 60] quests set forth in the ninth paragraph of the will became payable. The Executor accordingly has made payment of these bequests, they being twelve in number and the final payment was only concluded last week. These bequests as paid amounted to $264,000.00.

Executor respectfully petitions that the said sum of $127,914.54 be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924.

2. Refund for Additional Payments for Administration Expenses

In the claim for abatement verified August 10, 1921, referring to Schedule "H" of the original return for federal estate taxes, the executor reserved the right to claim additional deduction from the corpus of the estate for additional administration expenses such as executor's commissions, counsel fees, surrogate's fees, etc. At the time of the filing of said claim for abatement these administration expenses had not been fixed and the Commissioner did not allow them for the reason that they had not then been paid. Since the said letter of the Commissioner of May 27th, 1924 additional administration expenses have been ascertained and paid to the amount of $96,592.95.

Executor respectfully petitions that the said sum of $96,592.95 be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924.

[fol. 61] 3. Refund for Additional Income Taxes Recently Determined by the Commissioner

In the claim for refund verified October 6th, 1922, referring to Schedule "I" of the original return for federal estate taxes, the executor reserved the right to claim an additional refund on account of income taxes assessed for the years 1917, 1918, 1919 and 1920. Since the filing of

Claim for Refund (October 6, 1922) and the Commissioner's verification thereof (May 27th, 1924), additional assessments of income tax have been made by the Commissioner for those years, and the executor has paid such additional income tax assessments in the amount of $53,326.93.

Executor respectfully petitions that the said sum of $53,326.93 be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924.

4. Claim for Refund Growing Out of Recent Decision of Board of Tax Appeals Affecting the Item of $200,117.09 Heretofore Taxed by the Commissioner as Corpus and Now Retaxed by Order of Board of Tax Appeals as Income.

In his letter of May 27th, 1924 the Commissioner ruled that an item, $200,117.09, belonged to the corpus of the estate and not the income and included it among the items of "Other Miscellaneous Property" in determining the total of the undivided interest in the partnership of A. H. Bull & Co. at $235,202.99. The executors, accordingly, paid the said federal estate taxes as assessed by the Commissioner. The Commissioner in his deficiency letter to the [fol. 62] executor in the matter of the income tax return, which letter was dated July 10, 1925 (IT-PA-2-60-D. LVH-201) contrary to his previous determination assessed this same $200,117.09 for income taxes as income. The Board of Tax Appeals, upon an appeal to it, decided on August 8, 1927 that said item of $200,117.09 should be assessed as income and upheld the Commissioner in the ruling set forth in his said deficiency letter of July 10th, 1925, and entered a deficiency judgment on November 3rd, 1927.

Executor respectfully petitions that the said sum of $200,117.09 be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924.

5. Additional Insurance Claims Paid on the Steamships Dorothy and Beatrice.

In the claim for abatement verified August 10, 1921, in referring to additions to Schedule "I" as originally returned in the return for federal estate taxes, reference was made to the insurance of steamships by the decedent.

At the time of the filing of the said claim for abatement the amount of these risks which had been assumed by the decedent were estimated. It was not possible at that time to state them accurately, since the underwriter's adjustment had not been completed. In addition to the estimated amount set up in said claim for abatement there have since been paid additional claims to the amount of $9,234.71.

Executor respectfully petitions that the said sum of $9,234.71 be allowed as a deduction from the net estate for [fol. 63] tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924.

Summary

The executor and petitioner claims deductions from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924 as follows:

Net estate as taxed by Commissioner		$3,066,419.82
Total amount of deduction therefrom as herein petitioned for:		
For charitable bequests	$127,914.54	
For administration expenses	96,592.95	
For additional income taxes	53,326.93	
For Tax Board decision	200,117.09	
For additional insurance	9,234.71	
		$487,186.22
Balance net estate for tax as herein petitioned for		$2,579,233.60

The total tax assessable upon the net estate at a valuation of $2,579,233.60 as herein petitioned for would result in an estate tax of $242,592.70.

Leaving an overpayment on account of federal estate tax of $69,534.47.

Executor and petitioner respectfully prays that the prior claim for refund heretofore allowed be reopened so as to permit the further refund of the said sum of $69,534.47.

In view of the death of the widow, Evelyn P. Bull, this estate is now ready to be closed and distributed to the heirs except for the final determination and adjustment of these taxes. Petitioner, therefore, respectfully requests a personal conference in order that the matters herein set forth may be further explained and additional data and briefs

[fol. 64] submitted, and the final tax to be paid determined, in order that the executor may promptly close the estate.

Ernest M. Bull.

Sworn to and subscribed before me this 18th day of November, 1927. Annete E. Graham, Notary Public. Kings County No. 77. New York County No. 92. Commission expires Mar. 30, 1928. (Seal.)

Conover English, Esquire, 765 Broad Street, Newark, N. J., Counsel for Estate Archibald H. Bull.

[fol. 65] EXHIBIT "F" TO PETITION

In re Estate of Archibald H. Bull

Ernest M. Bull, Executor, 40 West Street, New York City, New York

MT-ET-809-CL-A.R.-PEM.

Petition to Re-open Prior Claim for Refund Additional Affidavit

STATE OF NEW YORK,
County of New York, ss:

Ernest M. Bull, being duly sworn according to law, upon his oath deposes and says:

I make this affidavit as supplemental and additional to the petition to re-open prior claim for refund verified November 18th, 1927.

That petition for refund prayed that the prior claim for refund heretofore allowed be re-opened so as to permit the further refund of the sum of $69,534.47 based upon five (5) separate items set forth in said petition.

I supplement the evidence with respect to the said separate items as follows:

1. Refund for Additional Payments on Charitable Bequests

In his last will and testament the said Archibald H. Bull, by the 9th paragraph of said will provided as follows:

Ninth. Subject to the life interest of my said wife, Evelyn [fol. 66] P. Bull, I give and bequeath the following sums of

money to the following charitable organizations and institutions, provided the appraised value of my estate at the time of my death, after the payment of all inheritance taxes, both State and Federal, shall amount to at least $1,000.000.

(a) To the Young Men's Christian Association, of Elizabeth, New Jersey, $25,000 for its Endowment Fund.

(b) To the Elizabeth Orphan Asylum, of Elizabeth, New Jersey, $25,000.

(c) To the Home for Aged Women, of Elizabeth, New Jersey, $25,000 which sum I hope the managers of said Home will use to start a fund for a new building.

(d) To the Third Presbyterian Church, of Elizabeth, New Jersey, $15,000.

(e) To the Charity Organization Society, of Elizabeth, New Jersey, $10,000.

(f) To the Visiting Nurse Association, of Elizabeth, New Jersey, $10,000.

(g) To the Trustees of the State Association of The Young Men's Christian Association of the State of New Jersey, a corporation, for the benefit of the Wawayanda Boys' Camp, $5,000.

(h) To the Elizabeth Rescue Mission, of Elizabeth, New Jersey, $1,000.

(i) To the Egenolf Day Nursery, of Elizabeth, New Jersey, $1,000.

(j) To the Board of Foreign Missions of The Presbyterian Church, $5,000.

[fol. 67] (k) To the Board of Home Missions of the Presbyterian Church, said money to be used for work of said Board in Porto Rico, $5,000.

(l) To the Board of Ministerial Relief of the Presbyterian Church and Sustentation Fund of the Presbyterian Church, $5,000.

In case the appraised value of my estate at the time of my death, after the payment of all Inheritance Taxes both State and Federal, shall amount to at least $2,000,000 then and in such case, I give and bequeath to each of the chari-

table organizations and institutions named in this ninth paragraph of my will double the amount named to each."

The appraised value of his said estate, after the payment of all inheritance taxes, both State and Federal, did in fact amount to at least $2,000,000. The result was that the legacies specified in the said 9th paragraph became payable in double the amount named. These legacies thus became payable in the total amount of $264,000. As additional evidence that said sum of money was paid on said legacies I attach hereto as Schedules Nos. 1 to 12 inclusive, a true copy of each of the receipts signed by each of said charities for the amount bequeathed to each under the said 9th paragraph of the said will, and offer to produce the original of said receipts for inspection, the aggregate of said receipts being $264,000.

Reference is hereby made to the Commissioner's letter to the Executor, dated May 27, 1924, wherein charitable, public and similar bequests are determined on review and allowed to the amount of $136,085.46, leaving a further sum of [fol. 68] $127,914.54 (the aggregate of these two items being $264,000.00) which should be allowed as a deduction from the net estate for tax as fixed by the Commissioner in his said letter of May 27, 1924.

2. Refund for Additional Payments for Administration Expenses

The executor petitions that the amount of $96,592.95 be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924. This total of $96,592.95 is made up as follows:

"E. D. Mulford, appraising property	$50.00
E. W. Phares, appraising property	82.00
C. N. Codding, Surrogate fee	1,386.00
McCarter & English, legal fees and expenses	15,074.95
Ernest M. Bull, balance of executor's fee	40,000.00
Evelyn P. Bull, balance of executor's fee	40,000.00
	$96,592.95"

As further evidence of the payment of said monies I attach hereto as Schedule No. 14 a copy of receipted bill of E. D. Mulford for $50.00, and as Schedule No. 15, a copy of

the receipted bill of E. W. Phares for $82.00; also as Schedule No. 16, a copy of receipted bills of C. N. Codding, Surrogate, for $1,386. I also attach as Schedule No. 17, a copy of the decree of the Union County Orphans Court dated April 3rd, 1925, ordering payment of legal fees and expenses to Messrs. McCarter & English to the amount of $15,074.95 and allowing to the Executors the sum of $80,000, [fol. 69] as and for balance of their commission. I also attach as Schedule No. 18, a copy of receipted bill of said McCarter & English for said $15,074.95, and as Schedules Nos. 19 and 20 copy of receipted bills of the then executors, Evelyn P. Bull and Ernest M. Bull, in the amount of $40,000 each. I herewith offer to produce the original of said receipts and certified copy of said decree of the Union County Orphans Court.

3. Refund for Additional Income Taxes Recently Determined by the Commissioner

The executor petitions that the amount of $53,326.93 be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924. This total is made up as follows:

"Additional 1917 Income Taxes		$31,770.11
Additional 1918 Income Taxes	22,018.78	
Additional 1919 Income Taxes	37,521.20	
	59,539.98	
Less Overassessment, 1/1/20-2/13/20	38,217.46	21,322.52
Additional 1919 Income Taxes		234.30
		$53,326.93"

Payment of these monies can be verified from the records of the Department and I herewith offer to produce for inspection the original receipts for said monies from the appropriate Collectors of Internal Revenue.

[fol. 70] I also attach hereto as Schedule No. 21, copy of letter of the Commissioner dated September 5th, 1921, with respect to the additional 1919 income taxes for $234.30. I also attach as Schedule No. 22, a copy of letter of E. M. Chatterton, Deputy Commissioners, dated March 9th, 1923, with respect to the additional 1917 income taxes for $31,770.11. I also attach as Schedule No. 23, copy of letter of

J. G. Bright, Deputy Commissioner, dated July 5, 1923, together with copy of statement accompanying said letter with respect to the additional 1918 income taxes for $21,322.52.

4. Claim for Refund Growing Out of Recent Decision of Board of Tax Appeals Affecting the Item of $200,117.09 Heretofore Taxed By the Commissioner As Corpus and Now Retained By Order of Board of Tax Appeals As Income.

The petition to re-open prior claim for refund, verified November 18th, 1927, is hereby amended so as to strike from said petition Item No. 4 reading as follows:

"4. Claim for refund growing out of recent decision of Board of Tax Appeals affecting the item of $200,117.09 heretofore taxed by the Commissioner as corpus and now retaxed by order of Board of Tax appeals as income."

This item No. 4 as set forth in the said petition verified November 18th, 1927 is abandoned.

5. Additional Insurance Claims Paid On the Steamships "Dorothy" and "Beatrice"

The amount of refund claimed is $9,234.71 made up as follows:

[fol. 71] "Insurance Claim — S. S. 'Dorothy' 1/9/19 ..... $2,734.71
Insurance Claim—S.S. 'Beatrice' 11/3/19..... 6,500.00

$9,234.71"

As further evidence of the payment of said monies I attach hereto as Schedule No. 24, copy of receipted bill of A. H. Bull & Co. to Estate of A. H. Bull, dated March 24, 1924 for $2,734.71, and as Schedule No. 25, release of A. H. Bull Steamship Company to Estate of A. H. Bull, dated February 26, 1925 for $6,500.00. I herewith offer to produce the original of said receipt and said release.

Ernest M. Bull.

Sworn to and subscribed before me this 16th day of February, 1928. Annete M. Graham, Notary Public. N. Y. (Seal.)

[fol. 72] Schedule "1"

Elizabeth, New Jersey, September 29th, 1927.

Board of Home Missions of the Presbyterian Church in the United States of America hereby acknowledges receipt of the sum, of Ten Thousand ($10,000.00) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1930.

Board of Home Missions of the Presbyterian Church in the United States of America, by (Signed) Verian Banks, Treasurer.

[fol. 73] Schedule "2"

Elizabeth, New Jersey, September 30, 1927.

Egenolf Day Nursery Association, Elizabeth, New Jersey, hereby acknowledges receipt of the sum of Two Thousand ($2,000.00) Dollars from Ernest M. Bull, sole surviving executor of the estate of Archibald H. Bull, deseased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

Egenolf Day Nursery Association, Elizabeth, New Jersey, by (Signed) Mariana Batjer, Treas. of Egenolf Day Nursery Assn.

[fol. 74] Schedule "3"

Elizabeth, New Jersey, September —, 1927.

Visiting Nurse Association of Elizabeth, New Jersey hereby acknowledges receipt of the sum of Twenty Thousand ($20,000) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

Visiting Nurse Association of Elizabeth, New Jersey, by (Signed) Marjorie C. Brown, Treas.

[fol. 75] Schedule "4"

Elizabeth, New Jersey, September —, 1927.

Third Presbyterian Church, Elizabethtown, New Jersey hereby acknowledged receipt of the sum of Thirty Thousand ($30,000.00) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

Third Presbyterian Church, Elizabethtown, New Jersey, by J. Anderson Frazer, Treas.

[fol. 76] Schedule "5"

Elizabeth, New Jersey, September —, 1927.

Elizabeth Rescue Mission & Woodyard Inc. hereby acknowledges receipt of the sum of Two Thousand ($2,000) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

Elizabeth Rescue Mission & Woodyard, Inc., by Rev. Howard T. Schecklow, President.

Many, many thanks.

[fol. 77] Schedule "6"

Elizabeth, New Jersey, September 24th, 1927.

The Board of Foreign Missions of the Presbyterian Church in the United States of America hereby acknowledges receipt of the sum of Ten Thousand ($10,000.00) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

The Board of Foreign Missions of the Presbyterian Church in the United States of America, by Russell Carter, Associate Treasurer.

[fol. 78] Schedule "7"

Elizabeth, New Jersey, September 23rd, 1927.

The Trustees of the State Association of the Young Men's Christian Association of the State of New Jersey hereby acknowledge receipt of the sum of Ten Thousand ($10,000.00) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to them in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

The Trustees of the State Association of the Young Men's Christian Association of the State of New Jersey, by Chas. S. Farrell, Treas.

[fol. 79] Schedule "8"

Elizabeth, New Jersey, September 22nd, 1927.

Young Men's Christian Association of Elizabeth, N. J. hereby acknowledges receipt of the sum of Fifty Thousand ($50,000.) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

Young Men's Christian Association of Elizabeth, N. J., by C. A. Corbet, Treas.

[fol. 80] Schedule "9"

Elizabeth, New Jersey, September 22, 1927.

Elizabeth Orphan Asylum Association of Elizabeth, New Jersey hereby acknowledges receipt of the sum of Fifty Thousand ($50,000.00) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, Deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

Elizabeth Orphan Asylum Asssociation of Elizabeth, New Jersey, by Isabel Halsey, Treas.

[fol. 81] Schedule "10"

Elizabeth, New Jersey, November 15, 1927.

Family Welfare Society of Elizabeth, N. J., hereby acknowledges receipt of the sum of Twenty Thousand ($20,000.00) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

Family Welfare Society of Elizabeth, N. J., by Hugo A. Hilyerdorff, Treas.

[fol. 82] Schedule "11"

Elizabeth, New Jersey, September 30th, 1927.

Home for Aged Women, Elizabeth, N. J., hereby acknowledges receipt of the sum of Fifty Thousand ($50,000.00) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

Home for Aged Women, Elizabeth, N. J., by Helen G. Wilson, Treas.

[fol. 83] Schedule "12"

Philadelphia, Pennsylvania, Nov. 1st, 1927.

The Presbyterian Board of Ministerial Relief and Sustentation hereby acknowledges receipt of the sum of Ten Thousand ($10,000.00) Dollars from Ernest M. Bull, sole surviving executor of the Estate of Archibald H. Bull, deceased, as payment in full of the bequest made to it in the ninth paragraph of the will of the said Archibald H. Bull, probated in the office of the Surrogate of Union County, New Jersey, February 26th, 1920.

The Presbyterian Board of Ministerial Relief and Sustentation, by John H. Gross, Treasurer. (Seal.)

[fol. 84] Schedule "14"

Check 4250.

E. D. Mulford, Real Estate Expert, 286 North Broad St., Elizabeth, N. J.

September 22d, 1922.

McCarter & English, Attorneys, to E. D. Mulford:

To services rendered in submitting report of opinion of value of property of A. H. Bull Estate located on West Jersey St. and Edgar Place, Elizabeth, N. J. to Thomas G. Lawler, $50.

Received payment with thanks,

E. D. Mulford.

Sept. 26th, 1922.

[fol. 85] Schedule "15"

Elwood W. Phares, Insurance in All Its Branches, Real Estate Broker, 225 Broad Street

Elizabeth, N. J., October 6th, 1922.

Messrs. McCarter & English, Prudential Building, Newark, N. J.:

Date, ——.
Company and Number, ——.

Property covered	Premium
For services in connection with the appraisal of property situated 224-226 Edgar Place, 232-234 Edgar Place, and 221-241 West Jersey St., Elizabeth, N. J. Owned by the Estate of A. H. Bull	$82.00

Paid Oct. 10, 1922. E. W. Phares, per I. M. D.

[fol. 86] Schedule "16"

Elizabeth, N. J., April 6, 1925.

Estate of Archibald H. Bull, in account with Charles N. Codding, Surrogate of the County of Union:

All fees are now received and collected for the sole use of the county and papers cannot be filed or recorded or copies furnished until fees are paid.

Fees on accounting, decree, recording, &c	1,379.90
Advertising and posting	5.60
	1,385.50

Rec'd payment.

Charles N. Codding. B.

Check 4320.

[fol. 87] Schedule "16a"

Elizabeth, N. J., March 31st, 1925.

Estate of Archibald H. Bull, Deceased, McCarter & English, Proctors, in account with Charles N. Codding, Surrogate of the County of Union:

All fees are now received and collected for the sole use of the county and papers cannot be filed or recorded or copies furnished until fees are paid.

1 testamentary certificate, 50 cents.

Rec'd payment.

Charles N. Codding.

Check 4320.

[fol. 88] State of New Jersey,
Union County Surrogate's Court:

I, George H. Johnston, Surrogate and ex-officio Clerk of the Orphans' Court of the said County of Union, do hereby certify that I have compared the annexed copy of the decree allowing account in the Matter of the Estate of Archibald H. Bull, late of the county and State aforesaid, deceased, with the original thereof now remaining in this office, and have found the same to be a correct transcript thereof, and of the whole of such record.

Witness my hand and steal of office, this eighth day of February, in the year of our Lord one thousand nine hundred and twenty eight.

(Signed) George H. Johnston, Surrogate and Clerk of the Orphans' Court of Union County, N. J.
(Seal.)

[fol. 89] Schedule "17"

UNION COUNTY ORPHANS' COURT, JANUARY TERM, 1925

In the Matter of the Estate of ARCHIBALD H. BULL, Deceased

DECREE

The Surrogate having audited and stated the second account of Ernest M. Bull and Evelyn P. Bull, Executors and Trustees under the last Will and Testament of Archibald H. Bull, deceased, the said second accounting being the final accounting of said Ernest M. Bull and Evelyn P. Bull as executors; and placed the same on the files of his office twenty days previous to the Third day of April, 1925, and having on the day last aforesaid, reported the same to this Court for allowance and settlement and it having been proved to the satisfaction of the court that notice of their intention to settle the said account on the third day of April, A. D. 1925, in this court was given by said accountants, according to law, and application being made on due notice for the allowance of commissions and counsel fees, and the court having examined the said account and the vouchers, receipts for payments and disbursements claimed thereunder, and having found the same to be correct in all particulars, and no exceptions being made thereto.

It is, on this Third day of April, A. D. 1925, by the Orphans' Court of the County of Union and State of New [fol. 90] Jersey, ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance remaining in the hands of said accountants amounting to $3,027,116.24; and that out of said balance, said executors be and they are allowed the sum of $80,000.00 as and for the balance of their commissions as executors as aforesaid, and that a counsel fee of $15,000.00 be allowed to Messrs. McCarter & English, proctors for said accountants, besides the sum of $74.95 actual disbursements incurred by them.

And it is further ordered that the said Executors and Trustees do further pay out of said balance in their hands Surrogate's fees amounting to $1,385.50.

And it appearing that in and by his said last will and testament, the said Archibald H. Bull did give, devise and

bequeath all the rest, residue and remainder of his estate unto his wife, Evelyn P. Bull, and his son, Ernest M. Bull, in trust, and did constitute and appoint said Evelyn P. Bull and Ernest M. Bull trustees for the said trust created under his said will, for the residue of his estate.

It is further ordered that out of the aforesaid sum of $3,027,115.24, after deducting therefrom the amount of commissions, counsel fees and disbursements, and surrogate's fees hereinbefore allowed, there remains a balance of $2,930,655.79 to be distributed according to the terms of the said will.

It is further ordered that the said executors do turn over to the said trustees named in said will, the said balance of $2,930,655.79 to be administered by said trustees according to the terms of the said will.

Alfred A. Stein, Judge.

[fol. 91] Schedule "18"

5285. April 29, 1925.

Received of Estate A. H. Bull Fifteen Thousand and Seventy Four 95/100 Dollars Counsel's fees $15,000. Disbursements $74.95—settlement of affairs of estate.

McCarter & English.

$15,074.95.

Schedule "19"

5291. June 22, 1925.

Received of Estate A. H. Bull Forty Thousand 00/100 Dollars Executors' fees as allowed under decree Union County Orphans Court Jan. 1925.

Ernest M. Bull, Executor.

$40,000.00.

Schedule "20"

June 22, 1925.

Received of Estate Archibald H. Bull Forty Thousand 00/100 Dollars Executors Fees under decree Orphans Court a/c Evelyn P. Bull.

Ernest M. Bull, Attorney in Fact.

$40,000.00.

[fol. 92] Schedule "21"

September 5, 1921.

IT-G-FAR-P-AGB.

Mr. Ernest M. Bull, Executor, Estate of A. M. Bull, deceased, 17 Battery Place, New York, N. Y.

SIR:

An examination has been made of the claim filed by the above named decedent for the abatement of $16,662.41, additional income tax for 1916 and of the claim filed by you as executor for the estate of the above-named decedent for the credit of $16,662.41 to be applied against the unpaid balance of the assessment for 1919.

The additional tax having been paid and as the claim for the credit supersedes the claim for abatement of $16,662.41 the claim for abatement is therefore rejected.

The claim for credit is based upon the statement that stock dividends received from the A. H. Bull Steamship Company are not taxable and that the assessment of tax thereon is illegal.

In a reinvestigation of your books and accounts by a revenue agent the stock dividends were eliminated, however, other differences were found which decreased the overpayment by $234.00 as follows:

Interest on notes $1,430.20 was transferred from Column A to Column B no tax on this amount having been paid at source and expenses were found to — overstated $2,000.00. The adjustment of interest on notes indicates a [fol. 93] difference of $14.30 and the adjustment of expenses indicates a difference of $220.00 (2% normal tax and 9% surtax) or a total of $234.30.

Your claim for credit will therefore be allowed for $16,428.11 and rejected for $234.30 in the next schedule to be approved.

Respectfully, —— ——, Commissioner.

[fol. 94] Schedule "22"

Treasury Department,

Washington

Office of Commissioner of Internal Revenue

IT-PA-FR-DA-709.

Mar. 9, 1923.

Mr. Ernest M. Bull, Executor, Estate of Archibald H. Bull,
40 West St., New York, N. Y.

SIR:

An examination of the income tax return of Archibald H. Bull, deceased, for the year 1917 and of his books of account and records, taking into consideration the statement contained in your letter of March 18, 1922, and the facts disclosed at a conference with your representative, Mr. Conover English and yourself, discloses an additional tax liability for that year of $31,770.11 instead of $61,300.72, as recommended by the revenue agent. The verification of his tax liability has been reviewed and approved by this office with the following exceptions:

The Revenue Agent included in Block "A" the amount of $105,833.90, which represented income in the form of insurance premium whereas the actual amount received in 1917 was $54,620.99, and the balance received in the years prior thereto.

As a result of this adjustment there is indicated an additional tax of $21,770.11 instead of $61,300.72.

[fol. 95] With reference to the assessment of excess profits tax on Block "A" you are advised that the same has been reduced from $9230.75 to $5133.72 representing 8% on income from business in which no invested capital was employed. You will be advised as to the result of the examination for the years subsequent to 1917 in a future communication.

You are advised that in order that the collection of this tax may not be jeopardized by the delay incident to the giving of the usual thirty days notice, as provided for in Section 250 (d) of the Revenue Act of 1921, an immediate assessment by the Commissioner of Internal Revenue will be made.

The Bureau will, however, entertain a claim in abatement if an appeal is filed within thirty days from the receipt of this letter. The appeal attached to the claim should be filed with the Collector of your district and be under oath setting forth in full all information upon which you base your protest and should be addressed to the Commissioner of Internal Revenue for the specific attention of IT-PA-FR-DA-709. On request a conference will be arranged prior to final decision.

If appeal is not filed, payment should be made upon receipt of notice and demand from the collector of Internal Revenue for your district.

Respectfully, (S) E. M. Chatterton, Deputy Commissioner.

[fol. 96] Schedule "23"

Treasury Department,

Washington

Office of Commissioner of Internal Revenue

IT-PA-FR-DA-709.

Jul. 5, 1923.

Mr. Ernest M. Bull, Executor, Estate of Archibald H. Bull, 40 West Street, New York, N. Y.

SIR:

An examination of your income tax returns and of your books of account and records for the years 1918, 1919, 1920 discloses an additional tax liability for the years 1918 and 1919 aggregating $59539.98 and overassessments for the period 1/1/20-2/12/20 amounting to $38217.46 as shown in detail in the attached statement.

In accordance with the provisions Section 250 (d) of the Revenue Act of 1921, you are granted thirty days within which to file an appeal and show cause or reason why this tax or deficiency should not be paid. No particular form of appeal is required, but if filed it must set forth specifically the exceptions upon which it is taken, shall be under oath, contain a statement that it is not for the purpose of delay, and the facts and evidence upon which you rely must be fully stated. The appeal, if filed, must be addressed to [fol. 97] the Commissioner of Internal Revenue, Washing-

ton, D. C., for the specific attention of IT-PA-FR-DA-709, and will be referred to the Income Tax Unit before transmittal to the agency designated for the hearing of such appeals.

You may, if you desire, request a conference before the Income Tax Unit in connection with the appeal, to be held within the period prior to the expiration of five days after the time prescribed for the filing of the appeal. If the Income Tax Unit is unable to concede the points raised in your appeal, it will be transmitted, together with the recommendation of the Income Tax Unit, to such agency as the Commissioner may designate for final consideration.

Where a taxpayer has been given an opportunity to appeal and has not done so, as set forth above, and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement of the assessment will be entertained.

This assessment is in addition to all other outstanding and unpaid assessments appearing upon the Collector's lists.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

Respectfully, (S) J. G. Bright, Deputy Commissioner.

[fol. 98] Statement

IT-PA-FR-DA-709.

In re Mr. Ernest M. Bull, Executor, Estate of Archibald H. Bull, 40 West Street, New York, N. Y.

Year	Additional tax	Overassessment
1918	$22,018.78	Paid by credit 1920 over assessment letter 2/21/24.
1919	37,521.20	$16,198.68 pd. by credit 1920 assessment letter 2/21/24; $21,322.52 pd. by check 4/16/24.

Period 1/1/20 to 2/13/20, $38,217.46.

The verification of your tax liability for the years 1918 and 1919 and the period of January 1, 1920 to February 13, 1920 as indicated by the Revenue Agent's Report dated

February 24, 1922, has been reviewed and approved by this office with the amendments recommended in the supplemental report dated May 31, 1923.

The overassessment shown herein will be made the subject of a certificate of overassessment which will reach you in due course through the office of the Collector of Internal Revenue for your district. If the tax question has not been paid, the amount will be abated by the Collector. If the tax has been paid the amount of overpayment will first be credited against unpaid income tax for another year or years and the balance, if any, will be refunded to [fol. 99] you by check of the Treasury Department. It will thus be seen that the overassessment does not indicate the amount which will be credited or refunded since a portion may be an assessment which has been entered but not paid.

Schedule "24"

New York, March 24, 1924.

Estate of A. H. Bull,

To A. H. Bull & Co., Dr.
Ship Brokers and Steamship Agents,
40 West Street.

S. S. "Dorothy" collision.
Voyage, ——

S. S. "Dorothy" collision with barge "Northern" No. 7 at Cardenas, Cuba, September 9th, 1919.

Total claim per Adjuster's statement	$18,231.39
¾ applicable to English Form Hull Policies	13,673.54
20% carried by A. H. Bull	2,734.71

Received Payment, A. H. Bull & Co., A. Role.

March 26, 1924.

[fol. 100] Schedule "25"

General Release

To All to Whom These Presents Shall Come or May Concern:

Greetings: Know ye, that A. H. Bull Steamship Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and having its prin-

cipal office and place of business at No. 40 West Street, New York City, N. Y., for and in consideration of the sum of Six Thousand Five Hundred Dollars ($6,500.00), lawful money of the United States of America, to it in hand paid by the Estate of A. H. Bull the receipt whereof is hereby acknowledged, has remised, released and forever discharged and by these presents does for itself, its successors and assigns and each of them, remise, release and forever discharge the said Estate of A. H. Bull, its successors and assigns, and each of them, the several steamships running in the lines of the said Company, their officers and crews, their heirs, executors and administrators, and in particular the steamship "Beatrice," her master, officers, crews, charterers and agents, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, liens, dues, sums of money, accounts, bonds, bills, controversies, agreements, trespasses, damages, judgments, executions, claims and demands whatsoever, whether at law or in admiralty, which against said A. H. Bull Steamship Co. or against any steamship thereof or running in its said lines or against said steamship "Beatrice" or any agent or person connected therewith it ever had, now has [fol. 101] or which it or its successors or assigns hereafter can, shall or may have for, upon or by reason of any matter, cause, or thing whatsoever from the beginning of the world to the day of the date of these presents for all claims and demands for loss, damage, injury and/or shortages arising from or in connection with fire which occurred on or about November 3rd, 1919.

In witness whereof the said A. H. Bull Steamship Co. has caused its corporate seal to be hereunto affixed and these presents to be signed by its Ass't Secretary this 26th day of February in the year one thousand nine hundred and twenty-five.

A. H. Bull Steamship Co., Edward B. Wright, Ass't Secty.

Sealed and delivered in presence of A. Nole. (Seal.)

[fol. 102] State of New York,
City of New York, ss:

On this 26th day of February nineteen hundred and twenty-five before me came E. B. Wright to me known, who being by me duly sworn, did depose and say that he re-

sides in Montclair, N. J., that he is the Ass't Secretary of The A. H. Bull Steamship Co., the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

Annette E. Graham, Notary Public. Kings County No. 46. New York County No. 80. – Commission expires Mar. 30, 1928. (Seal.)

———

[fol. 103] EXHIBIT "G" TO PETITION

(Execute separate form for each tax period)

Claim for Refund of Taxes Illegally Collected

STATE OF NEW YORK,
County of New York, ss:

Ernest M. Bull, Ex'r Estate Archibald H. Bull, 33 Prospect Avenue, Montclair, New Jersey, 40 West Street, New York City, N. Y.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged: ——.

2. Character of assessment or tax: Estate.

3. Amount of assessment or stamps purchased: $——.

4. Reduction of Tax Liability requested (Income and Profits Tax): $——.

5. Amount to be abated: $——.

6. Amount to be refunded (or such greater amount as is legally refundable), $41,517.45.

7. Dates of payment (see Collector's receipts or indorsements of canceled checks): June 18, 1921 and Aug. 11, 1921.

(If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed: 5th District of New Jersey.

[fol. 104] 9. District in which unpaid assessment appears: ——.

10. Amount of overpayment claimed as credit: $——.

11. Unpaid assessment against which credit is asked: Period from —— to ——, $——.

Deponent verily believes that this application should be allowed for the following reasons:

See affidavit of Ernest M. Bull and Schedule annexed.
Should further information be desired, advise the counsel of the Estate: Conover English, Esquire, 765 Broad Street, Newark, New Jersey.
See Commissioner's file MT-ET-809-CL-AR-PEM.
(Attach additional sheets if necessary.)

(Signed) Ernest M. Bull.

Sworn to and subscribed before me this 13th day of April, 1928. Annete E. Graham, Notary Public.

[fol. 105] AFFIDAVIT OF ERNEST M. BULL

STATE OF NEW YORK,
County of New York, ss:

ERNEST M. BULL, being duly sworn according to law, upon his oath deposes and says:

I am the sole surviving executor of the Estate of Archibald H. Bull, late of Elizabeth, New Jersey, who died February 13th, 1920.

On or about August 10th, 1921 payment was made to the Internal Revenue Collector for the 5th District of New Jersey of the sum of $336,264.66 as payment of the estate tax upon the return for Federal estate tax theretofore filed by said Estate of Archibald H. Bull.

On or about said August 10, 1921 a claim for abatement in the sum of $83,329.65 was filed.

On or about October 6th, 1922, a claim for refund in the sum of $166,428.60 was filed.

Thereafter and on or about May 27th, 1924 (as appears from a letter of the Commissioner of that date to the Executor) the said tax was adjusted and the said claim of abatement was allowed in the sum of $83,329.03 and rejected in the sum of $0.62; and the said claim of refund was allowed in the sum of $24,138.11 and rejected in the sum of $142,290.49.

At the time of the filing of the original return and also at the time of the filing of the claims for abatement and refund the widow of Archibald H. Bull, Evelyn P. Bull, was living.

Under the terms of the will of Archibald H. Bull and income of the residue of the estate was payable to his said widow and certain charitable bequests set forth in the ninth paragraph of his said Will were not payable until after her death.

Evelyn P. Bull, the widow, died on the 22nd day of July, 1927.

[fol. 106] Schedule "K" to Original Return

In his last will and testament the said Archibald H. Bull, by the 9th paragraph of his said will, provided as follows:

"Ninth. Subject to the life interest of my said wife, Evelyn P. Bull, I give and bequeath the following sums of money to the following charitable organizations and institutions, provided the appraised value of my estate at the time of my death, after the payment of all inheritance taxes, both State and Federal, shall amount to at least $1,000,000.

(a) To the Young Men's Christian Association of Elizabeth, New Jersey, $25,000 for its Endowment Fund;

(b) To the Elizabeth Orphan Asylum of Elizabeth, New Jersey, $25,000.

(c) To the Home for Aged Women, of Elizabeth, New Jersey, $25,000 which sum I hope the Managers of said Home will use to start a fund for a new building.

(d) To the Third Presbyterian Church of Elizabeth, New Jersey, $15,000.

(e) To the Charity Organization Society, of Elizabeth, New Jersey, $10,000.

(f) To the Visiting Nurse Association, of Elizabeth, New Jersey, $10,000.

(g) To the Trustees of the State Association of The Young Men's Christian Association of the State of New Jersey, a corporation, for the benefit of the Wawayanda Boys' Camp, $5,000.

[fol. 107] (h) To the Elizabeth Rescue Mission, of Elizabeth, New Jersey, $1,000.

(i) To the Egenolf Day Nursery, of Elizabeth, New Jersey, $1,000.

(j) To the Board of Foreign Missions of the Presbyterian Church, $5,000.

(k) To the Board of Home Missions of the Presbyterian Church, said money to be used for work of said Board in Porto Rico, $5,000.

(l) To the Board of Ministerial Relief of the Presbyterian Church and the Sustentation Fund of the Presbyterian Church, $5,000.

In case the appraised value of my estate at the time of my death, after the payment of all inheritance taxes both State and Federal, shall amount to at least $2,000,000, then and in such case, I give and bequeath to each of the charitable organizations and institutions named in this ninth paragraph of my will, double the amount named to each."

The appraised value of his said estate, after the payment of all inheritance taxes, both State and Federal, did in fact amount to at least $2,000,000. The result was that the legacies specified in the said 9th paragraph become payable in double the amount named. These legacies thus became payable in the total amount of $264,000 and the executor did, following the death of the widow, make payment of said legacies in said sum of $264,000.

In the Commissioner's letter to the Executor, dated May 27th, 1924 charitable, public and similar bequests are determined on review and allowed to the amount of $136,085.46, leaving a further sum of $127,914.54 (the aggregate [fol. 108] of these two items being $264,000.00) which should be allowed as a deduction from the net estate for tax as fixed by the Commissioner in his said letter of May 27th, 1924.

Schedule "I" to Original Return Referring Particularly to Federal Income Taxes

In the claim for refund certified October 6th, 1922, referring to Schedule I of the original return for federal estate taxes, the executor reserved the right to claim an additional refund on account of income taxes assessed for the years 1917, 1918, 1919 and 1920. Since the filing of Claim for Refund (October 6, 1922) and the Commissioner's verification thereof, (May 27th, 1924) additional assessments of income tax have been made by the Commissioner for those years, and the executor has paid such additional income tax assessments in the amount of $53,326.93.

The sum of $53,326.93 should be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924. This total is made up as follows:

"Additional 1917 Income Taxes		$31,770.11
Additional 1918 Income Taxes	$22,018.78	
Additional 1919 Income Taxes	37,521.20	
	59,539.98	
Less Overassessment 1/1/20-2/13/20	38,217.46	
		21,322.52
Additional 1919 Income Taxes		234.30
		$53,326.93"

Schedule H of Original Return

Reference is made particularly to Executor's commissions, counsel fees and surrogate's fees, as mentioned in [fol. 109] "Additional items to Schedule H of Original Return", set up in the claim for abatement verified August 10th, 1921.

In the claim for abatement verified August 10, 1921, referring to Schedule "H" of the original return for federal estate taxes, the executor reserved the right to claim additional deduction from the corpus of the estate for addi-

tional administration expenses such as executor's commissions, counsel fees, surrogate's fees, etc. At the time of the filing of said claim for abatement these administration expenses had not been fixed and the Commissioner did not allow them for the reason that they had not then been paid. Since the said letter of the Commissioner of May 27th, 1924 additional administration expenses have been ascertained and paid to the amount of $96,592.95.

This total of $96,592.95 is made up as follows:

"E. D. Mulford, appraising property	$50.00
E. W. Phares, appraising property	82.00
C. N. Codding, Surrogate Fee	1,386.00
McCarter & English, legal fees and expenses	15,074.95
Ernest M. Bull, balance of executor's fee	40,000.00
Evelyn P. Bull, balance of executor's fee	40,000.00
	$96,592.95"

The said sum of $96,592.95 should be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924.

Schedule "I" to Original Return

Reference is made particularly to the claim for insurance on Steamships as mentioned in "Additions to Schedule I as originally returned", set up in the claim for abatement verified August 10, 1921.

[fol. 110] At the time of the filing of the said claim for abatement the amount of these risks which had been assumed by the decedent were estimated. It was not possible at that time to state them accurately, since the underwriter's adjustment had not been completed. In addition to the estimated amount set up in said claim for abatement there have since been paid additional claims to the amount of $9,234.71.

This sum of $9,234.71 is made up as follows:

"Insurance Claim—S. S. "Dorothy" 1/9/19	$2,734.71
Insurance Claim—S. S. "Beatrice" 11/3/19	6,500.00
	$9,234.71

The said sum of $9,234.71 should be allowed as a deduction from the net estate for tax as fixed by the Commissioner of Internal Revenue in his letter dated May 27th, 1924.

Annexed hereto and made a part hereof is a Schedule showing the deductions claimed as the basis for the refund of $41,517.45.

Sworn to and subscribed before me this 13th day of April, 1928. Annette E. Graham, Notary Public, Kings County No. 19. New York County No. 96. Commission expires Mar. 30, 1930. (Notarial Seal.)

[fol. 111] SCHEDULE "26"

Net amount of Estate for tax as fixed by the Commissioner in his letter of May 27th, 1924		$3,066,419.82
Deductions—		
Deductions from Schedule K to original return referring to charitable bequests	$127,914.54	
Deductions from Schedule I to original return referring to federal income taxes	53,326.93	
Deductions from Schedule H of original return referring to executor's commissions, counsel fees, surrogate's fees	96,592.95	
Deductions from Schedule I to original return referring to insurance on steamships	9,234.71	
Revised net amount of Estate		$287,069.13
		$2,779,350.69
Taxes paid		$312,126.55
Corrected amount of Tax		$270,609.10
Amount of Refund		$41,517.45

[fol. 112] EXHIBIT "H" TO PETITION

Treasury Department, Internal Revenue Service

Form 843—Jan., 1922

Comptroller General U. S.

January 18, 1922.

Claim for Refund of Taxes Illegally Collected

Account number ——.

Date received: Received Nov. 4th, 1922. Comptroller's Dept.

STATE OF NEW JERSEY,
County of Essex, ss:

Archibald H. Bull, 225 West Jersey St., Elizabeth, N. J., 40 West St., New York City.

This deponent, being duly sworn, according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged: ——.

2. Character of assessment or tax: Estate Tax.

3. Amount of assessment or stamps purchased: $——.

4. Reduction of Tax Liability requested (Income and Profits Tax): $——.

5. Amount to be abated: $——.

6. Amount to be refunded (or such greater amount as is legally refundable): $166,428.60.

[fol. 113] 7. Dates of payment (see Collector's receipts or indorsements of canceled checks): ——.

(If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed: 5th District of New Jersey.

9. District in which unpaid assessment appears: ——.

10. Amount of overpayment claimed as credit: $166,428.60.

11. Unpaid assessment against which credit is asked: Period from —— to ——, $——.

Deponent verily believes that this application should be allowed for the following reasons:

See affidavit of Ernest M. Bull and schedules annexed. Should further information be desired please advise McCarter & English, #765 Broad St., Newark, New Jersey, attorneys of the estate.

(Signed) Ernest M. Bull.

Sworn to and subscribed before me this 6th day of October, 1922. Edith S. Powelson, Notary Public for New Jersey. (Seal.)

[fol. 114] AFFIDAVIT OF ERNEST M. BULL

STATE OF NEW JERSEY,
County of Essex, ss:

Ernest M. Bull, being duly sworn according to law, upon his oath, deposes and says:

I am one of the Executors of the Estate of Archibald H. Bull, and am the active executor in charge of said estate.

On or about August 10, 1921, payment was made to the Internal Revenue Collector for the 5th District of New Jersey of the sum of $336,264.66 as payment of the Estate Tax upon the Return for Federal Estate Tax theretofore filed by said Estate of Archibald H. Bull.

Application is now made for a refund to the amount of $166,428.60 upon the ground that said sum of $166,428.60 represents taxes illegally collected. The grounds of said application and the items upon which application is made are as follows: reference being made to the Return for Federal Estate Tax:

1. Schedule B item 41 as follows:

"Twelve thousand five hundred and fifty shares of the A. H. Bull Steamship Company, 17 Battery Place, N. Y. C. common par $100 at 250—unlisted ..... $3,137,500."

The value of $250 per share of the stock of the A. H. Bull Steamship Company set up in the Return and upon which the tax was paid, was taken as the supposed market value of the stock at the date of the decedent's death on February 13, 1920. No analysis of the books had been made at that time. The stock was and still is inactive and the valuation of $250 per share is now proved to have been erroneous.

[fol. 115] Upon a similar Return filed with the Comptroller of the State of New Jersey, deponent is advised that the said Comptroller refused to accept said valuation of $250 per share, as correct, and placed a lower valuation on the stock. Neither deponent nor his attorneys are permitted, under the rules and regulations of the State Comptroller's Department, to examine the papers, no formal assessment having yet been made, but deponent has been credibly informed that the Comptroller's assessment was made upon a considerably lower valuation than $250 per share.

An analysis of the books of the A. H. Bull Steamship Company for the year 1919 shows that the book value of the stock was $161.33 per share, as of December 31, 1919, which date was about six weeks prior to decedent's death. The average book value of the stock of the Steamship Company for the years 1913 to 1920 inclusive is $138.70. Annexed hereto as Exhibit No. 1 is a copy of the condensed balance sheet of the A. H. Bull Steamship Company for the years 1913 to 1920 inclusive.

Deponent verily believes that the valuation of the stock of the A. H. Bull Steamship Company as set forth in Schedule B—item 41 should be at 161⅓ for 12,550 shares, which would reduce the valuation to $2,024,691.50 or a reduction of $1,112,808.50.

2. Schedule B—Item 47 as follows:

"3,207 shares of stock of Economical Homes Association, par value $25, @ 25, unlisted, $95.175."

The decedent, about three or four years before his death, became greatly interested in providing better living condi- [fol. 116] tions for working men and their families. He was much interested in the Charity Organization Society of Elizabeth and had visited many homes of working people, and had become convinced that much of the unrest and discontent among this class of people was caused by inadequate homes, and became convinced that it was a part of his civic duty to help provide better homes for working people.

In pursuance of this idea decedent caused to be incorporated the Economical Homes Association, to which he contributed a very large sum of money, either in cash or in property, and all of the capital of $305,000, with the exception of some $4,000 or $5,000 which was contributed by friends of the enterprise, was contributed by decedent. The Association, either directly or through decedent, acquired considerable property in different parts of the City of Elizabeth, some of which had already been built upon, and other of which was vacant land. The existing houses were either rebuilt or improved, and on a tract of land in South Elizabeth a group of thirty-six houses was erected, and on other of the property a number of two and four family houses were erected, so that room was provided for eighty-four families and one store. The buildings were of

the cheapest possible construction in order that they might rent at a minimum. The consequent result is that the depreciation of the property has been very great, the upkeep alone amounting to over five per cent of the cost. The buildings are not of a character to be salable, particularly the four-family units, as these are not a kind of property that a working man or tenant cares to buy, and the cheapness of the construction and the cost of upkeep makes all of the buildings undesirable as an investment.

[fol. 117] The decedent began the original work of construction of the houses in his own name and later, upon the organization of the Economical Homes Association, he turned over to it all of the properties which he had acquired for the purpose of carrying on this charitable work. He turned over all these properties at actual cost to him, nor did he include therein his own time nor the value of much grading, planting of lawns and work of that nature, which he supervised and had done by gardeners and men in his own employ, nor did he include the cost of a truck which he owned and which worked the greater part of the time for the Association.

At the time of decedent's death contracts were outstanding and work had been started on four additional four-family houses which have since been completed by the Association.

Upon its organization the Association rented rooms as an office in Elizabeth and decedent put in charge thereof a Mr. McClelland, who had previously been employed by A. H. Bull & Co. and who had later become crippled from disease. Under an arrangement which decedent made with A. H. Bull & Co. that company paid about two-thirds of Mr. McClelland's salary and the Association paid the balance. Mr. McClelland with the assistance of his wife kept the accounts, collected the rents and acted as agent for the property. All the officers of the Association, as well as the Directors, serve without compensation and Mr. McClelland was, and is, the sole salaried employee, except at times a stenographer, and the amount of his compensation as paid by the association only amounted to $1,200 a year.

At the time of decedent's death the rents which were being charged were unusually low. Deponent, as Executor, [fol. 118] was called upon to assume the management of the Association, and felt that by increasing the rents and han-

dling the concern as a business proposition it might be placed on a six per cent basis, after taking care of repairs and depreciation, and to that end caused a slight increase to be made in the rents, but after several years of experience it is now demonstrated that the property cannot be made to pay more than two per cent on the investment, and further that the properties are not marketable, except at a heavy loss.

The stock is valued in the Return (Schedule "B" item 47) at par. The stock is of course unlisted and inactive, and the Executors had no certain knowledge on which to estimate the value, and, desiring to err on the right side, put it in the Return at par. Annexed hereto as Exhibit No. 3 is a copy of the balance sheet as of December 31, 1919. It will be observed that the reserve for depreciation is put in at two per cent although the actual depreciation is nearer 5%. The Government allows a depreciation of three per cent. It will also be observed that a dividend of five per cent paid for the year 1919 was in excess of the earnings for that year.

Deponent verily believes that the valuation of the stock of the Economical Homes Association set forth in Schedule "B" item 47 should be at 18 for 3,207 shares, which would reduce the valuation of $57,726 or a deduction of $22,449.

Of the 3,807 shares of stock of Economical Homes Association, listed in Schedule B item 47, 600 shares of said stock were given by decedent to his daughter, Evelyn Bull McLain the Christmas prior to his death. Said 600 shares were included in the total of 3,807 shares reported in Item 47 Schedule B of the Return at $25 per share. In a claim for abatement which was verified on August 10, 1921, and [fol. 119] filed, said 600 shares of stock given to said Evelyn Bull McLain were deducted, together with the securities listed in Schedule "B," Items 37, 38, 39, 40, 43, 44, 45 and 46.

4. Schedule "D," item 6 as follows:

"6. Automobiles.
Pierce Arrow Touring Car, year 1919, $6,800."

At the time the return was made deponent inquired casually as to the value of decedent's Pierce Arrow touring car, which was a used car, and was informed $6,800 so stated

in Schedule D, item 6. On further investigations since made, he has taken the matter up with a Pierce Arrow Agency, who quoted him $5,000 for the car, and also with Lawson's Garage, Central Valley, New York, who handle high grade cars, and who have quoted him $3,000; for said car. He, therefore, verily believes that the car's valuation is about $4,000 as of the date of decedent's death and that the valuation of said car as set forth in Schedule "D" item 6 should be $4,000, or a deduction of $2,800.

5. Schedule I.

There should be added to Schedule "I" two further items as follows:

"Balance of subscription due to Elizabeth General Hospital under pledge ..... $13,000."

At the time this return was filed there had not come to the Executors' attention an item of $13,000 which should properly have been added to Schedule "I".
[fol. 120] Schedule "I" as filed totalled $421,735.80. It should be increased by $1,678.34, making a total of $441,414.14. This item of $19,678.34 is separable into two parts, and arises from the following facts:

1. An item of $13,000.

During his lifetime decedent, Mr. Bull, had agreed to contribute to the new proposal building of the Elizabeth General Hospital, of Elizabeth, N. J., the sum of $125,000. Up to the time of his death he had paid all of that pledge except $13,000. It appears from letters which he wrote to the Chairman of the Building Committee of the Hospital, and which letters were sent for the first time exhibited to the Executors after the filing of the Return, and in June, 1922, that $13,000 of the pledge had been withheld and he had agreed in writing to pay this at any time on demand. Demand was never made during his lifetime and it now constitutes a debt of the estate which the Executors must meet.

2. An item of $6,678.34.

Since the filing of the return, and also the filing of the Claim for Abatement, verified August 10, 1921, Examining Officers Frank A. Harder and H. F. Smith made an audit of the individual Income Tax Returns of the decedent for the

years 1917, 1918, 1919 and 1920, and filed their report dated December 22, 1921, in which they reported an additional assessment for the said years last mentioned of $82,967.89. The Executors acknowledge a liability for said years to the amount of $6,678.34, and they filed exceptions to so much of [fol. 121] the report as recommends an additional assessment above that amount. If, notwithstanding the exceptions, an assessment is made upon said report to the full amount of $82,967.89, a further claim will be made for taxes illegally collected upon the principal of the estate to the amount of $76,289.65.

The acknowledged liability of $6,678.34 for additional income taxes is set forth as follows:

1917	$4.30
1918	1,712.34
1919	4,820.13
1920	141.57
	$6,678.34

Deponent verily believes that said items aggregating $19,678.34 should be added to Schedule "I", which would increase the deductible item of $421,735.80 therein set forth to $441,414.14 and that appropriate refund should be made of the taxes overpaid because of the failure to have included these additional items aggregating $19,678.34. See Exhibit No. 2 for summary.

Ernest M. Bull.

Sworn to and subscribed before me this 6th day of October, 1922. Edith S. Powelson, Notary Public of New Jersey. (Seal.)

(Here follows side folio 122)

[fol. 122]

EXHIBIT 1 TO AFFIDAVIT

A. H. Bull Steamship Co.

Condensed Balance Sheet as at December 31, 1913, to 1920, Inclusive

	1913	1914	1915	1916	1917	1918	1919	1920
Assets—								
Cash	.....	.....	.....	45,000.00	150,000.00	663,248.03	412,198.76	324,761.53
Notes and Accounts Receivable	64,664.58	49,490.24	9,553.50	144,677.54	852,555.60	653,258.73	634,105.28	3,706,850.23
Investments	.....	.....	242,087.80	703,204.65	1,637,887.82	1,864,844.59	3,946,066.08	3,143,920.91
Miscellaneous Assets	5,300.84	3,424.68	1,545.00	.....	22,269.99	21,088.07	20,437.38	30,232.30
Steamers	1,678,450.00	1,816,797.03	2,471,582.76	3,195,869.03	3,412,060.16	3,415,444.26	3,415,444.26	3,415,444.26
Buildings	.....	.....	.....	.....	.....	.....	164,460.03	.....
Deferred Charges	29,013.47	41,601.41	37,036.02	74,028.17	97,933.04	146,657.04	111,504.80	111,377.77
	1,777,428.89	1,911,313.36	2,761,805.08	4,162,779.39	6,172,706.61	6,164,540.72	8,704,216.59	10,732,587.00
Liabilities—								
Notes and Accounts Payable	10,000.00	700.00	47,406.40	120,869.07	1,031,501.38	732,978.32	1,115,922.32	3,636,005.04
Reserve for Depreciation	.....	.....	50,462.95	366,953.63	626,707.42	1,466,504.74	2,170,722.59	2,236,490.75
Reserve for Taxes	.....	.....	.....	.....	722,262.08	1,090,179.11	1,025,344.86	295,806.65
Sundry Reserve	.....	.....	.....	.....	.....	.....	.....	72,465.89
Bonds	733,900.00	821,000.00	1,237,500.00	1,092,000.00	388,100.00	305,000.00	217,500.00	120,000.00
Mortgages	.....	.....	.....	.....	.....	.....	83,000.00	.....
Deferred Earnings	.....	.....	.....	.....	.....	.....	58,355.83	91,159.00
Capital Stock	876,200.00	876,200.00	1,000,000.00	2,000,000.00	2,500,000.00	2,500,000.00	2,500,000.00	2,500,000.00
Surplus	157,328.89	213,413.36	426,435.73	582,956.69	904,135.73	669,878.55	1,533,370.99	1,780,659.67
	1,777,428.89	1,911,313.36	2,761,805.08	4,162,779.39	6,172,706.61	6,764,540.72	8,704,216.59	10,732,587.00
Book Value of Stock per Share	117.95	124.36	142.64	129.15	136.15	126.80	161.33	171.22

[fol. 123] EXHIBIT 2 TO AFFIDAVIT

The following schedule shows the deductions claimed as

Net amount of Estate set forth in revised account verified Aug. 10th, 1921	$3,217,279.12
Deductions—	
Deductions to Schedule B	1,135,257.50
Deductions from Schedule D	2,800.00
Deductions through additions to Schedule I	19,678.34
Total decrease	1,157,735.84
Gross total above set forth	3,217,279.12
Deductions above set forth	1,157,735.84
	2,059,543.28
Revised net amount of Estate Taxes paid	$336,264.66
Corrected amount of tax	169,826.06
Amount of Refund	166,428.60

[fol. 124] EXHIBIT "I" TO PETITION

Treasury Department,

Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to MT-ET-Cl-809-CTK.

District of Fifth New Jersey.
Estate of Archibald H. Bull.
Date of death—February 13, 1920.

Ernest M. Bull, et al., Executors, Estate of Archibald H. Bull, 765 Broad Street, Newark, New Jersey.

SIRS:

The Bureau has examined the application for reopening of the claim for refund filed by you and has also considered your claim for refund of $41,517.45, Federal estate tax paid by you under the provisions of the Revenue Act of 1918.

The facts of this case are as follows:

This decedent died on February 13, 1920. Payment with respect to the Federal estate tax was made on June 15, 1921,

in the amount of $250,000.62 and on August 10, 1921, in the amount of $81,264.66. On August 10, 1921, a claim for abatement of $83,329.65 was filed. On October 10, 1922, a claim for refund of $166,428.60 was filed. By Bureau letter [fol. 125] of May 27, 1924, notice was given that the claim for abatement was approved as to $83,329.03 and was rejected as to 62 cents and that the claim for refund was approved and allowed as to $24,138.11 and was rejected as to $142,290.49. No further action was taken by the representatives of the estate until November 21, 1927, when a petition to reopen the claim was filed. In connection with the petition to reopen the original claim for refund, there was filed, on April 14, 1928, a new claim for refund of $41,517.45. The new claim for refund appears to be based upon the same contentions upon which the petition to reopen the old claim is based.

The items presented in the petition for reopening were not included in the original claim for refund and only the income tax item was mentioned, reference being made to the controversy as to the amount of income tax. It was stated that if the controverted amount should be assessed, "a further claim" would be made with respect to the estate tax. Thereafter, part of the amount of income tax in controversy was assessed and paid. In the petition for reopening, refund of estate tax upon the basis of such payment of income tax is requested. Attention is called to the fact that at the time the original claim was filed, such income tax had not been assessed or paid. No part of the original claim for refund was based upon the income tax which was then in controversy but the mere statement was made that, under certain conditions, a claim would be filed in the future. Therefore, all the grounds upon which this petition to reopen is based are distinctly new grounds, which could not be considered in connection with the original claim for refund should that claim be reopened.

[fol. 126] If the contentions advanced by the estate are valid, they might support a new claim for refund filed within the time provided by law. The deduction on account of charitable bequests was authorized by the Revenue Act of 1918 and not by paragraph 3 of Subdivision (a) of Section 403 of the Revenue Act of 1921, as was assumed in the brief filed on your behalf. Therefore, the special provision with respect to refunds contained in the last paragraph of Sec-

tion 403 of the Revenue Act of 1921 does not apply to this case. Accordingly, Section 3228 of the Revised Statutes, as amended, applies to every feature of the claim. The last payment of estate tax with respect to this estate was made on August 10, 1921. The "four years next after the payment of such tax" expired August 10, 1925. The petition to reopen was filed on November 21, 1927. The new claim for refund was filed on April 14, 1928.

The original claim for refund was rejected in part on May 27, 1924. The petition to reopen sets up an entirely new and distinct claim which for refund will not be reopened. The claim for refund filed on April 14, 1928, is barred by Section 3228, as amended, and is rejected in its entirety.

Respectfully, T. R. Mires, Acting Commissioner.
DMT.

[fol. 127] EXHIBIT "K" TO PETITION

(Execute separate form for each tax period)

Claim for Refund of Taxes Illegally Collected

Notice to Collector

Collector must indicate in block above the kind of claim, except in Income Tax cases.

STATE OF NEW YORK,
County of New York, ss:

Estate of Archibald H. Bull, Trustee, 40 West St., New York City, N. Y.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

Period—From Feb. 13, 1920, to Dec. 31, 1920.

1. Business in which engaged: ——.

2. Character of assessment or tax: Income Tax and Interest.

3. Amount of assessment or stamps purchased: $84,142.78.

4. Reduction of Tax Liability requested (Income and Profit Tax): $55,166.49.

5. Amount to be abated: ——.

6. Amount to be refunded (or such greater amount as is legally refundable): Tax, $55,166.49; Int., $7,510.95; $62,677.44.

[fol. 128] 7. Dates of payment (see Collector's receipts or indorsement of canceled checks): Apr. 14, June 15, Sept. 15, Dec. 14, 1921, and June 13, 1928 (under protest).

8. District in which return (if any) was filed: 5th District of New Jersey.

9. District in which unpaid assessment appears: ——.

10. Amount of overpayments claimed as credit: $——.

11. Unpaid assessment against which credit is asked: Period from —— to ——, $——.

Deponent verily believes that this application should be allowed for the following reasons:

1. Said additional tax is illegal, erroneous, excessive and invalid and was illegally, erroneously and improperly assessed.

2. Said tax was assessed and collected after the statutory period of limitations upon the collection thereof by restraint or by proceedings in court for the collection thereof, had expired.

3. Said tax, as assessed and collected, was assessed upon an additional sum of $200,117.09. This sum represented the share of the decedent, Archibald H. Bull, for the period from February 13th, 1920 to December 31st, 1920, in the earnings of the firm of A. H. Bull & Co. pursuant to agreement among the partners that in the event of the death of any one of the partners, his estate should receive his proportionate share of the profits of the firm which he would have received had he lived, for the balance of the year from the date of death. Said sum of $200,117.09 was originally [fol. 129] assessed by the Commissioner as corpus and the estate tax thus assessed thereon was paid by the Executor. Thereafter, the Commissioner re-assessed the same item as income and assessed a tax in the sum of $55,166.49 which,

with interest, amounted to the said sum of $62,677.44. Said sum of $62,677.44 was paid under protest.

Said assessment was erroneously and illegally made against the said item, $200,117.09, as income, whereas in fact and in law the said $200,117.09 was corpus and not income and the tax on the said item as corpus had been assessed and paid previous to the re-assessment of said $200,117.09 as income.

Deponent calls particularly your attention to the case of George Nichols and Mary B. Nichols vs. United States, U. S. Court of Claims, #F-81, November 7, 1927, where the facts and circumstances were so almost identical as to make this decision a ruling case as applied to the present application for refund.

A petition for certiorari was filed in the United States Supreme Court to review the decision of the Court of Claims in the Nichols Case, the petition being entitled United States vs. Nichols, #753, October Term 1927. The petition for certiorari was denied on April 16th, 1928.

See also the earlier decision of the Court of Claims in the same Nichols Case, #F-81, April 4th, 1927.

Deponent, as Executor of the Estate of Archibald H. Bull, asks leave to submit additional affidavits setting forth the facts in detail which show that said item of $200,117.09 was corpus and not income, and also asks leave to submit briefs upon the questions of law involved, and also re-
[fol. 130] quests an oral hearing before the Commissioner upon said affidavits and briefs.

Estate Archibald H. Bull. (Signed) Ernest M. Bull, Trustee.

Sworn to and subscribed before me this 6th day of July, 1928. Annete E. Graham, Notary Public of N. Y.

[fol. 131] EXHIBIT "L" TO PETITION

"Ninth. Subject to the life interest therein of my said wife, Evelyn P. Bull, I give and bequeath the following sums of money to the following charitable organizations and institutions, provided the appraised value of my estate at the time of my death, after the payment of all Inheritance Taxes, both State and Federal, shall amount to at least $1,000,000.

(a) To the Young Men's Christian Association, of Elizabeth, New Jersey, $25,000 for its Endowment Fund;

(b) To the Elizabeth Orphan Asylum, of Elizabeth, New Jersey, $25,000.

(c) To the Home for Aged Women, of Elizabeth, New Jersey, $25,000 which sum I hope the Managers of said Home will use to start a fund for a new building.

(d) To the Third Presbyterian Church, of Elizabeth, New Jersey, $15,000.

(e) To the Charity Organization Society, of Elizabeth, New Jersey, $10,000.

(f) To the Visiting Nurse Association, of Elizabeth, New Jersey, $10,000.

(g) To the Trustees of the State Association of The Young Men's Christian Association of the State of New Jersey, a corporation, for the benefit of the Wawayanda Boys' Camp, $5,000.

(h) To the Elizabeth Rescue Mission, of Elizabeth, New Jersey, $1,000.

(i) To the Egenolf Day Nursery, of Elizabeth, New Jersey, $1,000.

[fol. 132] (j) To the Board of Foreign Missions of the Presbyterian Church, $5,000.

(k) To the Board of Home Missions of the Presbyterian Church, said money to be used for work of said Board in Porto Rico, $5,000.

(l) To the Board of Ministerial Relief of the Presbyterian Church and Sustentation Fund of the Presbyterian Church, $5,000.

In case the appraised value of my estate at the time of my death, after the payment of all Inheritance Taxes both State and Federal, shall amount to at least $2,000,000, then and in such case, I give and bequeath to each of the charitable organizations and institutions named in this ninth paragraph of my will, double the amount named to each."

[fol. 133] EXHIBIT "M" TO PETITION

Treasury Department,

Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to MT-ET-C1-809-CTK.

District of 5th New Jersey.
Estate of Archibald H. Bull.
Date of Death—February 13, 1920.

Alfred C. Frodel, Attorneys, % David A. Buckley, Jr., 815 15th Street, N. W., Washington, D. C.

SIR:

Reference is made to your request (received on January 31, 1929) for reopening with respect to certain income tax liabilities of the decedent and with respect to the Federal estate tax on the estate of the decedent. You suggested that adjustment of Federal estate tax should be deferred until the Federal income tax liability of the decedent should be determined. Accordingly, consideration of your application with respect to the Federal estate tax was held in abeyance.

By Bureau letter of August 9, 1929, you were informed of the decision of the Bureau upon your application for reopening with respect to income taxes. Accordingly, consid- [fol. 134] eration is now given to your application for reopening of the claim for refund of Federal estate tax, filed on October 10, 1922, and of the claim filed on April 14, 1928. The first claim was, on May 27, 1924, allowed in part and was rejected in part. The claim filed on April 14, 1928, was rejected in its entirety on June 30, 1928.

The facts alleged in the request for reopening do not bring the case within the purview of Treasury Decision 4235. The request for reopening does not relate to any contention presented in the claim filed on October 10, 1922. No payment was made within four years of the filing of the second claim on April 14, 1928. Your request for con-

ference is noted. In view of the fundamental objections to the allowance of further refund in this case, nothing would be gained by giving opportunity to file additional showing with a view to bringing the case within the purview of Treasury Decision 4235, or by granting a hearing.

Neither claim for refund is reopened.

Respectfully, R. M. Estes, Deputy Commissioner.

rsb.

[fol. 135] II. General Traverse—Filed Oct. 25, 1930

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Charles B. Rugg, Assistant Attorney General.

III. Change of Attorneys

The petition in this case was filed on September 16, 1930, by Dean Hill Stanley, Esq., as attorney of record.

On May 26, 1931, the said Dean Hill Stanley, withdrew his appearance as attorney for plaintiff.

On May 26, 1931, Mr. David A. Buckley, Jr., filed a power of attorney from plaintiff and was entered as attorney of record.

IV. Argument and Submission of Case

On October 11, 1933, the case was argued and submitted on merits by Mrs. Elizabeth D. Davis, for defendant. No appearance for plaintiff.

[fol. 136] V. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.**—Filed March 5, 1934

Mr. David A. Buckley, Jr., for the plaintiff.

Mr. Lawrence P. Mattingly was on the brief.

Mrs. Elizabeth B. Davis and Mr. John A. Rees, with whom was Mr. W. W. Scott, for the defendant.

Plaintiff instituted this suit to recover (1) the sum of $62,677.44, with interest, income tax for the period February 13 to December 31, 1920, alleged to have been erroneously and illegally collected; and (2) the sum of $41,517.45, with interest, estate tax alleged to have been erroneously and illegally collected.

The first item is based on the claim that upon the death of the decedent there was a dissolution of the partnership of which he was a member and that the amount of $212,718.79 thereafter received from the surviving partners, who continued the business under the circumstances hereinafter disclosed in the findings, was an acquisition by the surviving partners of the interest of the deceased partner in the partnership at the date of his death. It is insisted that inasmuch as the Commissioner of Internal Revenue valued the decedent's interest in the partnership for estate tax purposes at $235,202.99 at February 13, 1920, and the total amount ultimately received by the estate from this source was not in excess of the value fixed by the Commissioner, there was no taxable income to the estate on account thereof. In other words, it is contended by plaintiff that there was a sale by the estate to the surviving partners of the interest of the deceased partner in the partnership and that there was no gain or profit on the transaction.

In the alternative the petition alleges, with respect to the estate tax involved in the second item mentioned above, that if the amount of $212,718.79 received by the estate from the partnership was income, the amount was not a part of the gross estate at the date of decedent's death and should not have been included by the Commissioner in determining the value of the net estate for the purpose of the estate tax.

[fol. 137] We are precluded from considering the merits of the second claim relating to overpayment of the estate tax inasmuch as the suit was not instituted within two years after rejection of the claim for refund therefor nor within five years after collection of this tax.

Special Findings of Fact

1. Archibald H. Bull, a citizen and resident of Union County, New Jersey, died February 13, 1920, leaving a will, and plaintiff is the duly qualified and acting sole surviving executor and trustee of the decedent's estate.

2. Until his death the decedent was a member of the partnership of A. H. Bull & Company, ship agents and brokers, hereinafter referred to as the partnership. This partnership was created by written agreement of January 9, 1918, providing that the partnership was to begin January 1, 1918, and continue for one year from that date. The partnership agreement further provided "that in the event of the death of any one of the said copartners, the surviving partner or partners shall be at liberty to continue said business, and the estate of the deceased partner shall receive the same interests, or participate in the losses to the same extent, as said deceased partner would, if living, based on the usual method of ascertaining what the said profits or losses would be for one year subsequent to the death of the said partner or partners. Or the estate of the deceased partner shall have the option of withdrawing his interest from the firm within thirty days after the probate of will or letters of administration, and all adjustments of profits or losses shall be made as the date of such withdrawal." After the termination of the period provided for by the written agreeement the partnership continued to operate from year to year by mutual consent in accordance with the prior written agreement and without the formality of further agreements in writing.

The first method set out in the aforementioned partnership agreement was followed by the surviving partners and the estate to December 31, 1920. The intent and meaning of the agreement in this regard were that the surviving partner, or partners, and the estate of the deceased partner might permit the interest of the decedent to remain in the business to the end of the calendar year in which he died.

3. The partnership was engaged in the ship brokerage business, for which no capital was required and none was ever invested by the partners. At his death, February 13, 1920, the decedent's share of the partnership profits on the business transacted from January 1, 1920, to that date was $24,124.20, and he had no other accumulated profits in the business and owned no other tangible property in connection therewith. Thereafter the estate received $212,718.79 from the surviving partners, the same being that portion of the profits of the business carried on by them from February 13 to December 31, 1920, which the decedent would have been entitled to receive for that period had he

lived. Of the amount last mentioned, $200,117.09 was received by the estate during the period mentioned and $12,601.70 was received during the first two months of 1921. After the receipt by the estate of the foregoing amounts, [fol. 138] no further sums were received by the estate from the partnership from the operation of the business subsequent to February 13, 1920, and all interest of the estate in the earnings and property of the business terminated at December 31, 1920.

4. When filing an estate-tax return, the executor included the decedent's interest in the partnership at a value of $24,124.20, which represented the decedent's share of the earnings accrued to the date of death, whereas the Commissioner, in 1921, valued such interest at $235,202.99, and subjected such increased value to the payment of an estate tax, which was paid in June and August 1921. The last-mentioned amount was made up of the amount of $24,124.20 plus the amount of $212,718.79, hereinbefore mentioned. The estate tax on this increased amount was $41,517.45.

5. April 14, 1921, plaintiff filed an income-tax return for the period February 13, 1920, to December 31, 1920, for the estate of the decedent, which return did not include, as income, the amount of $200,117.09 received as the share of the profits earned by the partnership during the period for which the return was filed. The estate employed the cash receipts and disbursement method of accounting.

6. Thereafter, in July 1925 the Commissioner determined that the sum of $200,117.09 received in 1920 should have been returned by the executor as income to the estate for the period February 13 to December 31, 1920, and notified plaintiff of a deficiency in income tax due from the estate for that period of $261,212.65, which was due in part to the inclusion of that amount as taxable income and in part to adjustments not here in controversy. No deduction was allowed by the Commissioner from the amount of $200,117.09 on account of the value of the decedent's interest in the partnership at his death.

7. September 5, 1925, plaintiff filed an appeal with the United States Board of Tax Appeals from the deficiency in income tax set out in finding 6. After a hearing of the case on its merits the Board affirmed the action of the

Commissioner in including the item of $200,117.09, referred to in finding 6, in taxable income without any reduction on account of the value of the decedent's interest in the partnership at his death (7 B. T. A. 993), and determined a deficiency of $55,166.49, which, with interest of $7,510.95, was paid April 14, 1928.

8. July 11, 1928, plaintiff filed a claim for refund of $62,677.44 on the following grounds:

"Said tax, as assessed and collected, was assessed upon an additional sum of $200,117.09. This sum represented the share of the decedent, Archibald H. Bull, for the period from February 13th, 1920, to December 31st, 1920, in the earnings of the firm of A. H. Bull & Company pursuant to agreement among the partners that in the event of the death of any one of the partners his estate should receive his proportionate share of the profits of the firm which he would have received had he lived for the balance of the year from the date of death. Said sum of $200,117.09 was originally assessed by the Commissioner as corpus and the estate tax thus assessed thereon was paid by the executor. Thereafter the Commissioner reassessed the same item as income and assessed a tax in the sum of $55,166.49 [fol. 139] which, with interest, amounted to the said sum of $62,677.44. Said sum of $62,677.44 was paid under protest.

"Said assessment was erroneously and illegally made against the said item, $200,117.09, as income, whereas in fact and in law the said $200,117.09 was corpus and not income and the tax on the said item as corpus had been assessed and paid previous to the reassessment of said $200,117.09 as income."

The claim was rejected May 18, 1929.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and the petition is dismissed.

Judgment is rendered against the plaintiff for the cost of printing the record herein, the amount thereof to be entered by the clerk and collected by him according to law.

OPINION

LITTLETON, Judge, delivered the opinion of the court:

At the time of his death on February 13, 1920, decedent was a member of a partnership operating under an agreement containing a provision that in the event of death of a partner the surviving partners, with the consent of the executor, should be at liberty to continue the business for a stated time and the estate of the deceased partner might participate in the gains or losses of the business for such period to the same extent as the deceased partner would have participated if living.

The decedent's share of the partnership profits from January 1 to the date of his death on February 13, 1920, was $24,124.20, and the amount of the profits to which he would have been entitled for the remainder of that year, had he lived and continued a member of the partnership, would have been $212,718.79, which the estate received. Of the latter amount $200,117.09 was received by the estate during 1920 and the balance was received in 1921. The Commissioner included the full amount of the profits from February 13 to December 31, 1920, ultimately received by the executors, together with the earnings accrued to decedent at date of his death, as a part of the estate of the decedent subject to estate tax, and also included the earnings of $200,117.09 received in 1920 as income of the estate for the taxable period February 13 to December 31, 1920, subject to income tax.

We cannot consider whether the Commissioner correctly included the total amount received from the business in the net estate of the decedent subject to estate tax for the reason that the suit was not timely instituted. The only question for decision is whether the Commissioner correctly included the item of $200,117.09 in income for the purpose of income tax payable by the estate.

Plaintiff contends that upon the death of the decedent there was a dissolution of the partnership and that the amount of $212,718.79 paid by the surviving partners from the earnings of the business to December 31, 1920, was a consideration for the acquisition by them of the interest of the deceased partner in the partnership, and that, since the [fol. 140] value of the decedent's interest in the partnership at the date of his death, as determined by the Com-

missioner, was $235,202.99, there was no taxable income to the estate from the transaction.

The defendant insists that the business was continued, either as a partnership composed of the surviving partners and the executor or as a joint venture in which the estate shared in the profits and losses in the same manner as the decedent would have had he lived and, since the partnership realized profits, the portion of such earnings received by the estate constituted taxable income to it.

We find it unnecessary to discuss the question whether the estate or the executor was a member of a new partnership from February 13 to December 31, 1920, for the partnership agreement, when properly interpreted, did not provide for a sale of a deceased partner's interest to the surviving partners for a consideration to be measured by a proportionate part of whatever profits might be earned by the business for the remainder of the calendar year in which such member died. The language of the agreement shows clearly, we think, that the estate of a deceased partner, if it elected not to withdraw the decedent's interest immediately, was to give up no rights with respect to the property of the deceased in the business at the date of death if profits should be earned by the continuance of the business by the surviving partner, or partners, for the remainder of the calendar year. If the operation of the business had resulted in a loss, the estate would have shared therein at least to the amount of earnings accrued to the deceased partner at the date of his death. Burwell v. Mandeville's Executor, 2 How. 560. However, as there was no loss, we need not further discuss this phase of the agreement. In this case profits were earned and the estate became entitled to receive, and it did receive, in final settlement, that which the decedent would have been entitled to receive at December 31, 1920, had he lived until that date, namely, the profits accrued to decedent to February 13, 1920, of $24,124.20 and a portion of the profits of the business from February 13 to December 31, 1920, in the amount of $212,718.79. The first-mentioned amount of $24,124.20 was taxable income to the decedent for the taxable period prior to his death and constituted a part of his estate for the purpose of the estate tax. This amount was not again taxable to the estate when received, but the amount of $212,718.79 was taxable income as a gain or profit de-

rived by the estate from the use or employment of the property belonging to the decedent at the date of his death, pursuant to an arrangement between the decedent and the other partners prior to his death, to the carrying out of which the estate agreed.

The business in which decedent was a partner was largely, if not entirely, of a personal-service nature. No cash capital or other tangible asset was required and none was invested by the partners. The earnings depended largely upon the personal acquaintance and business relationship of the partners, and shippers and shipowners. Good will was important. When considered in connection with the nature of the business, the agreement, which was made at the time the partnership was first formed, shows that its purpose was to provide a method whereby the business would not be suddenly disrupted in the event of death of any of the partners by immediate withdrawal of accumulated funds by the estate, possible necessity of [fol. 141] change in name, or a controversy with respect to matters of accounting.

The estate consented to allow the interest of decedent in the partnership at the date of his death to remain in the business for a period subsequent to death and to a continuation of the business by the surviving partners in accordance with the method provided in the agreement until December 31, 1920. As a result, the estate received $212,718.79 as a gain which was earned subsequent to February 13, 1920. The estate, being a taxable entity, was clearly liable for income tax on this income and was properly taxed on $200,117.09 thereof received in 1920.

The petition must, therefore, be dismissed. It is so ordered.

[fol. 142] VI. JUDGMENT

At a Court of Claims held in the City of Washington on the 5th day of March, A. D., 1934, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover.

It is adjudged and ordered that the plaintiff's petition be and the same hereby is dismissed.

VII. Proceedings After Entry of Judgment

On May 4, 1934, the plaintiff filed a motion to extend time (60 days from May 4, 1934) within which to file a motion for new trial and for argument on same.

On May 4, 1934, the court entered the following order on said motion:

"The plaintiff is granted an extension of thirty days (30) within which to file motion for new trial. The matter of oral argument will be considered after motion is filed."

On July 3, 1934, on motion made therefor, the plaintiff filed a motion for new trial.

On October 15, 1934, the court overruled said motion.

[fol. 143] Clerk's Certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 39,277. Court of Claims. Term No. 649. Ernest M. Bull, Sole Surviving Executor and Trustee of the Estate of Archibald H. Bull, Deceased, Petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed January 15, 1935. File No. 649, O. T., 1934.

Supreme Court of the United States

Order Allowing Certiorari—Filed March 4, 1935

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.